
United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT
and VILLA C. ALBRIGHT,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Montana.

Filed

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F. D. Monckton,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of the Solicitors of Record.

Hon. JAMES C. McREYNOLDS, Attorney General of the United States, of Washington, D. C.,
and

Hon. BURTON K. WHEELER, United States Attorney for the District of Montana, of Butte, Montana,

Solicitors for Plaintiff and Appellant.

Messrs. COOPER & STEPHENSON, of Great Falls, Montana,

Solicitors for Defendants and Appellees.

*In the District Court of the United States in and for
the District of Montana.*

IN EQUITY—No. 1091.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BEN-
EDICT, WILLIAM H. ALBRIGHT, and
VILLA C. ALBRIGHT,

Defendants.

BE IT REMEMBERED, that on December 9th,
1911, the complainant filed its bill of complaint
herein in the words and figures following, to wit:
[1*]

*Page number appearing at foot of page of original certified Record.

*In the Circuit Court of the United States, Ninth
Circuit, in and for the District of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BEN-
EDICT, WILLIAM H. ALBRIGHT, and
VILLA C. ALBRIGHT,

Defendants.

Bill of Complaint.

To the Circuit Court of the United States, Ninth
Circuit, for the District of Montana, and to the
Honorable the Judges Thereof:

The United States, by Geo. W. Wickersham, At-
torney General of the United States, and James W.
Freeman, United States Attorney for the District of
Montana, brings this bill of complaint against Jen-
nie Peterson (formerly Jennie Benedict), William
H. Albright and Villa C. Albright, all of whom are
residents of the State of Montana, the defendants
herein, and thereupon your orator complains and
says:

FIRST.

That on and prior to the 19th day of July, A. D.
1901, your orator was the owner in fee simple of
those certain mineral lands situated in the State and
District of Montana, and within the Helena land dis-
trict, of which the land office is at Helena, Montana,
and now within the Great Falls land district, of
which the land office is at Great Falls, Montana, a

more particular description of said mineral lands is as follows, to wit: The southeast quarter of the southwest [2] quarter and the southwest quarter of the southeast quarter of section twenty-six, and the west half of the northeast quarter of section thirty-five, township seventeen north of range six east of Montana principal meridian, comprising an area of one hundred and sixty acres.

SECOND.

That at some time prior to the 11th day of July, A. D. 1901, but at what precise time cannot now be stated, the said defendant Jennie Peterson, then named and known as Jennie Benedict, and the said defendant William H. Albright entered into an agreement whereby the said defendant Jennie Peterson, then named and known as Jennie Benedict, in the State and District of Montana, was to enter the above-described lands under and by virtue of the provisions of section 2289 of the Revised Statutes of the United States, for the use and benefit of the said defendant William H. Albright, and that the said lands should be conveyed to the said defendant William H. Albright, by the said defendant Jennie Peterson, then named and known as Jennie Benedict, as soon as possible after final proof was made, the fees upon said entry and the purchase money paid, and the receiver's final receipt for the said lands issued; that the said defendant William H. Albright was to furnish all moneys necessary to pay all fees, the purchase price of said lands, and place all improvements upon said lands necessary to obtain a United States patent therefor; the exact terms

of which said agreement are at this time to your orator unknown; and which said agreement as the defendants Jennie Peterson, then named and known as Jennie Benedict, and William Albright, [3] and each of them, then and there well knew could only be carried out and accomplished by procuring and making and filing in the United States land office false and fraudulent statements in writing and under oath and false and fraudulent proofs to be reduced to writing and sworn to by the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses; and the said defendant Jennie Peterson, then named and known as Jennie Benedict, and William H. Albright, and each of them, then and there well knew that said lands so to be entered by the said defendant Jennie Peterson, then named and known as Jennie Benedict, were not subject to entry under the provisions of section 2289 of the Revised Statutes of the United States, and could only be acquired under the mineral laws of the United States.

THIRD.

That the said defendant Jennie Peterson, then named and known as Jennie Benedict, in pursuance of said unlawful agreement hereinbefore set forth, on the 19th day of July, A. D. 1901, under and by virtue of the provisions of section 2289 of the Revised Statutes of the United States, filed in the land office of the United States at Helena, Montana, her application No. 12,466 to enter as a homestead the following described lands, to wit: The southeast quarter of the southwest quarter, the west half of the

southeast quarter and the northeast quarter of the southeast quarter of section twenty-six, township seventeen north of range six east of Montana principal meridian; and thereafter the said defendant Jennie Peterson, then named and known as Jennie Benedict, amended her said homestead application so as to embrace and include [4] the following described lands, to wit: The southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section twenty-six, and the west half of the northeast quarter of section thirty-five, township seventeen north of range six east of Montana principal meridian, and filed the same in the land office of the United States at Helena, in the State and District of Montana, to enter said lands as a homestead in said amended application described. That thereafter the said amended application was approved and allowed by the register and receiver of the United States land office at Helena, Montana, so as to embrace the lands last above described.

FOURTH.

And your orator further alleges and charges that the lands hereinbefore described and each and every subdivision thereof, and which were included within the entry as amended of the said defendant Jennie Peterson, then named and known as Jennie Benedict, were mineral in character. That the said lands contained valuable mineral deposits, to wit, gypsum, and fluxing lime rock. That the said defendant Jennie Peterson, then named and known as Jennie Benedict, entered said lands with full knowledge of mineral character of the same, and with full

knowledge that the said lands were not subject to entry under section 2289 of the Revised Statutes of the United States, and could only be acquired under and by virtue of the mineral laws of the United States, and that the said defendant Jennie Peterson, then named and known as Jennie Benedict, entered said lands for the purpose of fraudulently obtaining title to said lands from your orator; all of which the said defendant William H. Albright then and there [5] well knew.

FIFTH.

That at the time of the filing by the said defendant Jennie Peterson, then named and known as Jennie Benedict, of her said homestead application No. 12,466 to enter the lands in this complaint first described and contemporaneously therewith she likewise filed in said land office of the United States at Helena, Montana, as required by law, her homestead affidavit and statement in writing under oath, duly subscribed and sworn to before W. M. Cockrell, United States Commissioner for the District of Montana, in which, among other matters and things, she said and deposed that her said application to enter said lands as a homestead was honestly and in good faith made for the purpose of actual settlement upon and cultivation of said lands and not for the benefit of any other person, and that she would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands so applied for, and that she did not apply to enter said lands for the purpose of speculation, but in good

faith to make a home for herself. That she had not directly or indirectly made and would not make any agreement or contract in any way or manner with any person or persons by which the title she might acquire from the Government of the United States would inure in whole or in part to any person except himself; and at the same time the said defendant Jennie Peterson, then named and known as Jennie Benedict, filed in said land office at Helena, Montana, a nonmineral affidavit and statement in writing under oath duly subscribed and sworn to before the said W. M. Cockrell, United States Commissioner [6] as aforesaid, in which said affidavit the said defendant Jennie Peterson, then named and known as Jennie Benedict, among other matters and things, stated that she was well acquainted with the character of said lands and each subdivision thereof, and that her present knowledge of said lands was such as to enable her to testify understandingly with regard thereto; that there was not to her knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or any deposits of coal; that there was not to her knowledge any placer, cement, gravel or other valuable mineral deposit; when in truth and in fact, as the said defendant Jennie Peterson, then named and known as Jennie Benedict, at the time of so filing her said application No. 12,466 and the making, signing, subscribing and swearing to her said affidavits as aforesaid, then and there well knew, and the said defendant William H. Albright then and there well knew that the said application

to enter said lands by said defendant Jennie Peterson, then named and known as Jennie Benedict, was not honestly and in good faith made for the purpose of actual settlement, residence and cultivation and was made for the benefit of the said defendant William H. Albright and not for the purpose of complying with all the requirements of the law as to settlement, residence and cultivation necessary to acquire title to said lands so applied for; that she did apply to enter said lands for the purpose of speculation and not in good faith for the purpose of making a home for herself; that she had directly made an agreement or contract with a person, to wit, the defendant William H. Albright, by which the title she might acquire from the Government of the [7] United States should inure to the benefit of the defendant William H. Albright; and that the said lands were not nonmineral in character as the said defendant Jennie Peterson, then named and known as Jennie Benedict, and as the said defendant William H. Albright then and there well knew, and that the said lands were not subject to entry under section 2289 of the Revised Statutes of the United States, and that the statements contained in said homestead affidavit of the said Jennie Peterson, then named and known as Jennie Benedict, and the statements contained in said nonmineral affidavit of the said defendant Jennie Peterson, then named and known as Jennie Benedict, were false and fraudulent and untrue as hereinbefore set forth, and the same were made and filed for the false and fraudulent purpose of imposing upon and deceiv-

ing the register and receiver of the said United States land office at Helena, Montana, and to cause and induce the officers of your orator to believe the statements contained in said affidavits were true; and that the said defendant, Jennie Peterson, then named and known as Jennie Benedict, intended to make settlement upon said lands and reside thereon and to cultivate the same in good faith and to comply with all the requirements of law as to settlement, residence and cultivation, and that she had not in any manner contracted or agreed with any person, persons or corporation by which the title she might acquire from the Government of the United States should inure in whole or in part; that she did not apply to enter said lands for the purpose of speculation, but in good faith to make a home for herself and for the false and fraudulent purpose of imposing upon and deceiving [8] the officers of your orator to believe that the statements contained in said nonmineral affidavit were true, and that the said lands so entered by the said defendant Jennie Peterson, then named and known as Jennie Benedict, were nonmineral in character, and for the false and fraudulent purpose of inducing said officers, and by means of the fraud and deceit hereinbefore specifically set forth to accept said homestead application and affidavits and file the same, and to accept the filing fee for said entry and to issue their receipt and certificate for the same. That at the time of the filing of the said homestead application and affidavits as aforesaid, the said register and receiver were paid the sum of sixteen dollars, the same

being the proper legal fee then and there due and payable to the said receiver upon the filing of said homestead application, and the said register and receiver of the United States land office, relying upon and believing the statements contained in said homestead application to be true, and that the said Jennie Peterson, then named and known as Jennie Benedict, intended to make settlement upon said lands, reside thereon and cultivate the same in good faith and comply with all the requirements of the law as to settlement, residence and cultivation, and that she had not in any manner contracted or agreed with any person, persons or corporation by which the title she might acquire from the Government of the United States would inure in whole or in part to any person or persons except *himself*. That she did not apply to enter said lands for the purpose of speculation, but in good faith to make a home for herself, and relying upon and believing the statements contained in said nonmineral affidavit and believing that the said lands so entered by the said defendant [9] Jennie Peterson, then named and known as Jennie Benedict, were nonmineral in character and were subject to entry under section 2289 of the Revised Statutes of the United States, then and there issued in the name of the said defendant Jennie Peterson, then named and known as Jennie Benedict, their receipt and certificate for such payment and attached thereto and connected with said receipt was and is a notation setting forth in detail the requirements of the law to be observed and complied with by the said defendant Jennie Peterson,

then named and known as Jennie Benedict, in order to obtain title to said lands so applied for by her as aforesaid, and to be noted by her as follows, to wit:

“Note.—It is required of the homestead settler that he shall reside upon and cultivate the lands embraced in his homestead entry for the period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years, he must file proof of his actual settlement and cultivation, failing to do which his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.”

SIXTH.

That your orator is informed and believes and therefore charges that the said money so paid as aforesaid was not the money of the defendant Jennie Peterson, then named and known as Jennie Benedict, who entered said lands, but on the [10] contrary that the same, as well as the personal expenses of the said defendant Jennie Peterson, then named and known as Jennie Benedict, in making said entry, was furnished and paid directly by or through the agents of the said defendant William H. Albright, in pursuance of said unlawful agreement hereinbefore set forth and referred to.

SEVENTH.

That in order to entitle the said defendant Jennie Peterson, then named and known as Jennie Benedict, to obtain and procure from the said United States a patent for the said tract of land in this complaint first described, under the homestead laws of the United States, it was incumbent upon her and she was required to make actual settlement upon said lands and reside thereon and cultivate the same for a period of five years from and after the filing of her said application and the affidavits hereinbefore set forth in the proper United States land office, or in the event she did not desire to remain upon said lands for the full period of five years to make payment for said lands at any time after the expiration of fourteen calendar months from and after the filing of said homestead application and affidavits, as aforesaid, at the rate of one dollar and fifty cents per acre, and make proper and satisfactory proof before the register and receiver of the proper land office of the United States of settlement and residence and cultivation of said lands from the date of filing of said homestead application and affidavit for a period of fourteen months and to the time of making such final proof and payment.

EIGHTH.

That for the purpose of availing herself of the privileges [11] afforded by section 2301 of the Revised Statutes of the United States and the acts amendatory thereof and supplemental thereto, and after the expiration of fourteen calendar months from and after the filing by her of said homestead application

and affidavits aforesaid, on or about the fifth day of August, 1905, the said defendant Jennie Peterson, then named and known as Jennie Benedict, appeared before C. H. Benton, receiver of the United States land office at Great Falls, Montana, said land office then and there being the proper United States land office of the land district wherein said lands were situated, with her final proof witnesses, Gust Benson and John Quick, and offered final proof before the said C. H. Benton, receiver of the said United States land office, as aforesaid, that she had settled upon said lands and premises and resided thereon and cultivated the same as required by law and within the meaning and intent of the homestead laws of the said United States, and then and there gave, made out, and signed her deposition and swore to the same before the said C. H. Benton, receiver of the said United States land office as aforesaid, and on the same date filed and caused to be filed the said deposition in the said United States land office at Great Falls, Montana, and then and there delivered and caused to be delivered and presented the said deposition so made, signed and sworn to by her, the said defendant Jennie Peterson, then named and known as Jennie Benedict, to the said register and receiver of the said United States land office as proof of the settlement, residence and cultivation of said lands, and the same was accepted by the said register and receiver of the said United States land office. That on the said date the said defendant [12] Jennie Peterson, then named and known as Jennie Benedict, then and there signed her non-

mineral affidavit and swore to the same before the said C. H. Benton, receiver of the said United States land office as aforesaid, to the effect that she was well acquainted with the character of said lands and each and every subdivision thereof; that her personal knowledge of said lands was such as to enable her to testify understandingly with regard thereto; that there was not to her knowledge within the limits thereof any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any deposits of coal, and that there was not within the limits of said lands to her knowledge any placer, cement, gravel or other valuable mineral deposits, and on said date filed and caused to be filed the said nonmineral affidavit in said land office as aforesaid, and then and there delivered and caused to be delivered and presented said affidavit so made, signed and sworn to by her, the said defendant Jennie Peterson, then named and known as Jennie Benedict, to the said register and receiver of the said land office aforesaid, and the said affidavit was accepted by said register and receiver of said land office.

NINTH.

That the said defendant Jennie Peterson, then named and known as Jennie Benedict, in her said deposition signed and sworn to by her as aforesaid, and delivered and presented to the said register and receiver and accepted by them as true of the settlement, residence and the cultivation of said lands, among other matters and things, testified and deposed that she had established her residence upon

said lands in October, 1901; that she began living on said lands in September, [13] 1901, and that she had placed improvements upon said lands consisting of a house thirteen feet by sixteen feet and had constructed upon said lands a barn twelve feet by fourteen feet and constructed one mile of five-wire fence upon said lands, all at a cost of at least six hundred dollars. That she had resided upon said lands continuously from September, 1901, except for a temporary absence of between five and six months in 1902, and an absence of about three months in the year 1903. That for the eight months immediately preceding the submission of said final proof she had been residing on said lands continuously. That she had not been absent from said lands six months any year since she filed on said lands. That she had cultivated fourteen acres of said lands and had raised crops three years on ten acres of the same; that she did not think there were any indication of coal, salines or minerals of any character on said lands. That the said defendant Jennie Peterson, then named and known as Jennie Benedict, procured from each of her said final proof witnesses, Gust Benson and John Quick, a like deposition taken before the said C. H. Benson, receiver of the said United States land office, at Great Falls, Montana, and signed and sworn to by said witnesses before said receiver of said land office, to the same effect and corroborative and in aid of the said deposition of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and filed the same, together with the said defendant Jennie Peter-

son's (then named and known as Jennie Benedict) own deposition in the said United States land office at Great Falls, Montana, and presented the same to the said register and receiver of the said land office as final proof [14] of the settlement, residence upon and cultivation of said lands by her as required by law, and all of which said depositions and sworn statements of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her said final proof witnesses, were then and there accepted by said register and receiver of the said United States land office as proof of settlement and residence upon and cultivation of said lands by the said defendant Jennie Peterson, then named and known as Jennie Benedict. That thereupon the said receiver of the said United States land office was paid the sum of two hundred dollars, being the final payment for said lands at the rate of one dollar and twenty-five cents per acre.

TENTH.

That your orator is informed and believes and therefore charges that none of the purchase money paid for said lands at said land office was the money of the said defendant Jennie Peterson, then named and known as Jennie Benedict, who entered said lands, but, on the contrary, that the same, as well as all moneys paid for the said land office fees in connection with the said entry, as well as the personal expenses of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses, as well as all improvements placed upon said lands, were furnished and

paid directly by or through the agents of the said defendant William H. Albright, in pursuance of said unlawful agreement hereinbefore set forth, and for which said two hundred dollars the said receiver of the said United States land office then and there issued in the name of the said defendant Jennie Peterson, then named and known as Jennie [15] Benedict, her final receipt No. 765, and the register of the said land office likewise then and there issued in the name of the said defendant Jennie Peterson, then named and known as Jennie Benedict, her final certificate No. 765 for the said lands, certifying that in pursuance of law the said defendant Jennie Peterson, then named and known as Jennie Benedict, had purchased said lands and that upon presentation of said certificate to the Commissioner of the General Land Office the said defendant, Jennie Peterson, then named and known as Jennie Benedict, in whose favor said certificate was issued, would be entitled to receive a patent for said lands. That thereafter the officers of your orator relying upon and believing the statements contained in the said defendant Jennie Peterson's (then named and known as Jennie Benedict) homestead application and affidavits aforesaid, and that the said defendant Jennie Peterson, then named and known as Jennie Benedict, intended to make settlement upon said lands, reside thereon and cultivate the same in good faith, and comply with all the requirements of the law as to settlement, residence and cultivation of said lands, and that she had not in any manner contracted or agreed with any

person or persons or corporation by which the title she might acquire from the Government of the United States would inure in whole or in part to any other person or persons except himself; that she did not apply to enter said lands for the purpose of speculation, but in good faith to make a home for herself, and believing that the said lands were nonmineral in character and were subject to entry under the homestead laws of the United States as hereinbefore referred to and mentioned, by means of which the said register and receiver of the said United States land office issued a [16] first receipt and certificate, and relying upon and believing the statements contained in said depositions of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses and believing that the said defendant Jennie Peterson, then named and known as Jennie Benedict, had made settlement and residence upon and cultivated said lands and had complied with the provisions of the acts of Congress hereinbefore referred to, and believing the matters contained in the nonmineral affidavits filed by said defendant Jennie Peterson, then named and known as Jennie Benedict, at the time of filing of her final proof, and the issuance by the said register and receiver of their final receipt and certificate, such proceedings were had that on the 30th day of December, 1905, a patent was issued and delivered by the said United States to the said defendant Jennie Peterson, then named and known as Jennie Benedict, that the acceptance of said depositions and testimony

of said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses, Gust Benson and John Quick, as final proof of the settlement, residence upon said lands and the cultivation of the same by said entry-woman, as required by law, by the said register and receiver, and the issuance of the final receipt by the said receiver, and the issuance of said final certificate of purchase by the said register as aforesaid, as hereinbefore mentioned and set forth, and the issuance of said patent for said lands to the said defendant Jennie Peterson, then named and known as Jennie Benedict, were had and done by the said officers of said land office and the officers of your orator, the United States of America, in reliance by them, and each of [17] them, upon the truth of said testimony and statements contained in said depositions of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses, Gust Benson and John Quick, and in reliance upon the good faith of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses, in the premises, and not otherwise.

ELEVENTH.

That the said depositions of the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses, were, and each of them was, then and there false and fraudulent, as they then and there well knew, and the same were made and filed with the intent to deceive the officers of the United States and to fraudulently

obtain a patent for the said lands in pursuance of said unlawful agreement existing between said defendants, and by fraud and deceit to procure a United States patent by means of said false and fraudulent statements and testimony made and contained in said depositions in this, to wit: That the said defendant Jennie Peterson, then named and known as Jennie Benedict, had not and did not establish a residence upon said lands, or any part or portion thereof, during the month of October, 1901, or at any other time, or at all, and that she had not placed improvements upon said lands consisting of a house thirteen feet by sixteen feet and a barn twelve feet by fourteen feet, and that she had not constructed one mile of five-wire fence upon said lands, all at a cost of at least six hundred dollars, and your orator alleges the fact to be that the value of the improvements upon said lands was less than three hundred dollars, and no greater sum was expended [18] by her, or anyone else, in placing improvements upon said entry; that the said defendant Jennie Peterson, then named and known as Jennie Benedict, had not resided upon said lands continuously from September, 1901, except for a temporary absence of between five and six months in 1902 and an absence of about three months in the year 1903, or at any other time, or in any other manner, or at all. That she had not been residing upon said lands, or any part or portion thereof, continuously for eight months immediately before the submission of her said final proof, or at any other time, or at all. That she had been

absent from said lands more than six months each and every year from said month of October, 1901. That she had not cultivated fourteen acres of said lands and had not raised crops three years on ten acres of the same; and your orator alleges the fact to be that no greater amount than five acres of said lands was ever cultivated either by said defendant Jennie Peterson, then named and known as Jennie Benedict, or anyone else prior to the making of said final proof. And your orator alleges the fact to be that the said defendant Jennie Peterson, then named and known as Jennie Benedict, never made settlement upon said lands, or any part or portion thereof, and did not establish residence and reside upon said lands, or any part or portion thereof, and had never cultivated any part or portion thereof in excess of five acres as hereinbefore set forth; and that she had no improvements thereon except a small claim shack of the value of one hundred dollars and a board shed of the value of fifty dollars. And your orator alleges the fact to be that each and all of said statements so made by the said defendant Jennie Peterson, then named and [19] known as Jennie Benedict, and her said final proof witnesses, as hereinbefore specifically mentioned and set forth, and which are contained in said affidavits, depositions and testimony as proof of settlement, residence upon and cultivation of said lands and as to the nonmineral character of the same, are utterly false and fraudulent and untrue, as the said defendants, Jennie Peterson, then named and known as Jennie Benedict, and William H.

Albright, and each of them, then and there well knew. And your orator is informed and believes and alleges the fact to be that all moneys expended in placing improvements upon and in cultivating said lands were expended by the said defendant William H. Albright for his own use and benefit and were had and done in pursuance of said unlawful agreement existing between said defendants, as hereinbefore set forth.

TWELFTH.

That the said testimony of the said Jennie Peterson, then named and known as Jennie Benedict, and of her said final proof witnesses, were false and fraudulent in every particular, as hereinbefore set forth, and the same were made and filed and offered as proof of settlement and residence upon and cultivation of said lands as aforesaid, and as proof of the nonmineral character of the said lands for the false and fraudulent purpose of imposing upon and deceiving the register and receiver of the said United States land office at Great Falls, Montana, and to cause and induce the said officers of your orator to believe that the statements and testimony contained in said depositions were true; that the said defendant Jennie Peterson, then named and known as Jennie Benedict, had in fact established settlement and residence [20] and had resided upon said lands and had cultivated the same as required by law, and that the said lands were nonmineral in character, for the purpose of obtaining and procuring, by means of said fraud and deceit, the issuance to the said defendant Jennie

Peterson, then named and known as Jennie Benedict, a United States patent for the said lands, in accordance with the terms of said unlawful agreement existing between said defendants, as hereinbefore set forth. That the said defendants William H. Albright and Jennie Peterson, then named and known as Jennie Benedict, by means of said false and fraudulent depositions and false and fraudulent statements and testimony therein contained, imposed upon and deceived the officers of the said United States and caused and induced the said officers to believe that the statements and testimony contained in said affidavits and depositions were true and that the said defendant Jennie Peterson, then named and known as Jennie Benedict, had in fact resided upon said lands and had cultivated the same as required by law, and that the said lands were nonmineral in character, and your orator alleges that the said officers of the United States, supposing and believing the statements and testimony contained in said affidavits and depositions to be true and relying upon the truth of said statements and testimony so falsely and fraudulently made and given by the said defendant Jennie Peterson, then named and known as Jennie Benedict, and her final proof witnesses, and believing from said affidavits and depositions and the statements and testimony therein contained that she had made settlement and had resided upon and cultivated said lands according to law, and that the said lands were nonmineral in character, were wholly deceived and imposed [21] upon and misled into allowing said final proof

and permitting the issuance of said final receipt and the issuance of said final certificate of purchase of said lands, and the issuance by the said United States of a patent for said lands to the said defendant Jennie Peterson, then named and known as Jennie Benedict.

THIRTEENTH.

Your orator is informed and believes and therefore alleges that after the issuance of said final receipt and certificate and the said patent for the said lands to the said defendant Jennie Peterson, then named and known as Jennie Benedict, the said defendant Jennie Peterson, then named and known as Jennie Benedict, advised the said defendant William H. Albright that she was ready and willing to convey said lands to him in accordance with the terms of said unlawful agreement hereinbefore set forth; that the said defendant William H. Albright, with intent and design to further deceive your orator, to wit, on August 28, 1905, caused the said defendant Jennie Peterson, then named and known as Jennie Benedict, to convey said lands by deed to the defendant Villa C. Albright, wife of the defendant William H. Albright; and your orator further alleges that said conveyance to the said defendant Villa C. Albright was without consideration moving from the said Villa C. Albright to the said defendant Jennie Peterson, then named and known as Jennie Benedict; but your orator alleges on information and belief that the money then paid to the said defendant Jennie Peterson, then named and known as Jennie Benedict, for said land, was the

money and property of the said defendant William H. Albright, and paid pursuant to said illegal agreement aforesaid, [22] and that said title has since last mentioned date, and now is, held by the said defendant Villa C. Albright as trustee for said defendant William H. Albright, and for the purpose of imposing upon and deceiving your orator so as to make it appear that the said Villa C. Albright was and is an innocent purchaser for value, and without notice of the fraud so practiced upon your orator as aforesaid; but your orator alleges that whatever right, title or interest the said defendant Villa C. Albright acquired in or to said lands the same was acquired with full knowledge of the fraud so practiced upon your orator as aforesaid, and that said purchase or pretended purchase is void and should be so in equity decreed in favor of the United States; and any purchase or pretended purchase, or incumbrance or lien or pretended incumbrance or apparent lien so alleged to exist at law or in equity upon said lands, or any part or portion thereof, in favor of the said defendant Villa C. Albright should be voided by a decree of this court.

FOURTEENTH.

And your orator further sheweth unto your honors, that the said defendants William H. Albright and Villa C. Albright are now in the occupancy, possession and enjoyment of the said lands and premises, and that the said defendants William H. Albright and Villa C. Albright claim some right, title or interest in and to said lands; but your orator alleges that by whatever pretended right or title the

said William H. Albright and Villa C. Albright now hold possession of or occupy the said lands, the same is wholly void and ineffectual as against the rights of your orator. That the existence of said patent so fraudulently obtained and procured [23] by the said defendant Jennie Peterson, then named and known as Jennie Benedict, as hereinbefore set forth, on its face entitles the said Jennie Peterson (formerly Jennie Benedict), and those claiming under her to exercise the right of absolute ownership on and over said lands, and to assert a legal title to the same, to which the defendants are not entitled; that if said patent remains uncanceled and in force, the same may be used in fraud of your orator and all persons relying thereon as a valid and substantial conveyance of the legal title to the said lands and premises.

FIFTEENTH.

And your orator further charges that it appears that the said defendants Villa C. Albright and William H. Albright claim to have purchased in good faith and for a valuable consideration said lands; but, nevertheless, your orator avers and charges that the said defendants purchased or acquired said rights with notice of the fraud so as aforesaid perpetrated upon your orator, and that such purchase or the acquisition of such right should be so in equity decreed in favor of the United States, and any purchase or pretended purchase, or incumbrance or lien, or pretended incumbrance or apparent lien, alleged to exist at law or in equity thereon upon said lands, or any part or portion thereof, should be voided by

decree of this Honorable Court.

THEREFORE, THE PREMISES CONSIDERED, complainant prays: That for as much as complainant is without full and adequate remedy in the premises, save in a court of equity, to the end that the defendants may make full, true and direct answer to all and singular the matters and things herein set forth as fully as if they had been fully interrogated [24] thereunder, but not under oath (an answer under oath being hereby expressly waived), and to the end that the said patent may be declared null and void and be set aside, revoked and held for naught, and be delivered up to complainant and surrendered for cancellation and that the said defendants, Jennie Peterson (formerly Jennie Benedict), William H. Albright and Villa C. Albright be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, or advantages under said patent, and that said instrument or instruments, by virtue of which the two last named defendants claim any right, title or interest in or to any part of said lands in this bill of complaint first described, that the same be declared null and void and of no force and effect, and that all and singular of said lands may be adjudged and decreed to be the perfect property of the complainant full and clear of all claims of any of said defendants. That said defendants during the progress of this cause, and thereafter, finally and perpetually may be enjoined from setting up any claim to the said lands or any part thereof, and from creating any cloud upon complainant's title to the

same, or any part thereof, and that the possession thereof may be restored to the complainant.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issued out of and under the seal of this court, directed to the said defendants Jennie Peterson (formerly Jennie Benedict), William H. Albright and Villa C. Albright, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide and perform such orders and decree in the premises as the Court shall deem proper and required by [25] the principles of equity and good conscience.

And complainant prays for such other and further relief as to your Honors shall seem proper and shall seem meet and agreeable to equity.

GEO. W. WICKERSHAM,

Attorney General of the United States.

JAS. W. FREEMAN,

United States Attorney, District of Montana. [26]

United States of America,

District of Montana,—ss.

James W. Freeman, being first duly sworn, deposes and says: That he is the regularly appointed, qualified and acting United States Attorney for the district of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

JAS. W. FREEMAN.

Subscribed and sworn to before me this 7th day of December, 1911.

S. C. FORD,
Notary Public in and for the State of Montana, Residing at Helena, Montana.

My commission expires September 7, 1912.

[Indorsed]: Filed Dec. 9, 1911. Geo. W. Sproule, Clerk. [27]

Thereafter, on December 9, 1911, a subpoena in equity was duly issued herein, in the words and figures following, to wit:

[Subpoena.]

Circuit Court of the United States, Ninth Judicial Circuit, District of Montana.

IN EQUITY.

The President of the United States of America,
Greeting: To Jennie Peterson (Formerly Jennie Benedict), William H. Albright and Villa C. Albright, Defendants.

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Federal Building, Helena, Montana, on the 1st day of January, A. D. 1912, to answer to a bill of complaint exhibited against you in said court by the United States of America, complainant, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 9th day of December, in the year of our Lord one thousand nine hundred and eleven and of our Independence the 136th.

[Seal]

GEO. W. SPROULE,
Clerk.

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of January next, at the Clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

[Seal]

GEO. W. SPROULE,
Clerk.

GEO. W. WICKERSHAM,

U. S. Atty. Genl.,

J. W. FREEMAN,

U. S. Atty., Helena, Montana,

Solicitors for Complainant. [28]

United States Marshal's Office,
District of Montana.

I hereby certify that I received the within writ on the 11th day of December, 1911, and personally served the same on the 12 and 13 days of December, 1911, by delivering to and leaving with William H. Albright and Villa C. Albright, at Great Falls, Cascade County, December 12th, 1911, Jennie Peterson, 4 miles west of Logging Creek, Cascade County, December 13th, 1911, said defendants named therein

personally at places stated in the county of Cascade in said District, a copy thereof.

Dated Dec. 14, 1911.

WILLIAM LINDSAY,
U. S. Marshal.
By Charles Morgan,
Deputy.

[Indorsed]: Title of Court and Cause. Subpoena in Equity. Filed Dec. 16, 1911. Geo. W. Sproule, Clerk. [29]

Thereafter, on February 5th, 1912, Answer was duly filed herein in the words and figures following, to wit: [30]

In the Circuit Court of the United States, Ninth Circuit, in and for the District of Montana.

UNITED STATES OF AMERICA,
Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT
and VILLA C. ALBRIGHT,
Defendants.

Answer.

Now come the above-named defendants, William H. Albright and Villa C. Albright, and, for their joint and several answer to the Bill of Complaint of the complainant herein, the United States of America, allege as follows:

I.

They ADMIT that on and prior to the 19th day of July, 1901, complainant was the owner in fee of those certain lands situated in the State and District of Montana, and within the Helena Land District of which the land office is at Helena, Montana, and that the same now are within the Great Falls Land District of which the land office is at Great Falls, Montana, and that a particular description of said lands is the southwest quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section twenty-six; and the west half of the northeast quarter of section thirty-five, township seventeen [31] north of range six east of Montana principal meridian, comprising an area of one hundred sixty acres. But answering defendants DENY that said lands were on the 19th day of July, 1901, or at any other time, or that they now are mineral lands or valuable for mineral, and they allege the fact to be that the agents of complainant long prior to the date aforesaid, in accordance with their duty under the law in such case made and provided, duly examined such lands and classified the same as nonmineral in character, as in truth and fact such lands were and are.

II.

Answering defendants DENY that at some time prior to the 11th day of July, 1901, or at any other time, or ever at all the said defendant Jennie Peterson, then known as Jennie Benedict, entered into an agreement with the answering defendant William H. Albright whereby said Jennie Peterson,

known as Jennie Benedict, was to enter the above-described lands under and by virtue of the provisions of section 2289 of the Revised Statutes of the United States for the use and benefit of the defendant William H. Albright, and that the said lands should be conveyed to the defendant William H. Albright by said defendant Jennie Peterson, then known as Jennie Benedict, as soon as possible after final proof was made and the receiver's final receipt for the said lands issued; and DENY that the defendant William H. Albright entered into any such agreement or entered into any agreement with the defendant Jennie Peterson, then known as Jennie Benedict, whatever with respect to said lands. Answering defendants DENY that the said defendant William H. Albright was to [32] furnish all or any of the moneys necessary to pay all or any of the fees for the purchase of said lands, or for the improvements thereon necessary to obtain title thereto, or any agreements whatever of the tenor and effect alleged in complainant's bill of complaint, or any agreement whatever in respect to said lands, prior to the time when said Jennie Peterson, then known as Jennie Benedict, obtained title to said lands from the complainant. And these answering defendants DENY that, if the said Jennie Peterson, then known as Jennie Benedict, perpetrated any fraud in or about the purchase or acquiring of the title to any of the lands mentioned in complainant's bill of complaint, either of the answering defendants had any knowledge or notice of such fraudulent purpose or acts of the said defendant Jennie Peterson, then known as Jennie

Benedict. And the answering defendants further DENY that they or either of them ever had or now have any knowledge of the alleged mineral character of said lands, and allege the fact to be that they always believed and now believe that said lands were not mineral in character; that they are not underlaid with gypsum and do not contain any valuable mineral deposit, but that said lands always were and still are more valuable for agricultural purposes than for mineral purposes; and they DENY that said lands were of such character as would have enabled them to be disposed of under the laws of the United States as mineral lands.

III.

Further answering these answering defendants ADMIT that on the 19th day of July, 1901, or thereabouts, said [33] Jennie Peterson, then known as Jennie Benedict, made her homestead application to enter as a homestead the southeast quarter of the southwest quarter, the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section twenty-six, township seventeen north of range six east of Montana principal meridian; and that she thereafter amended her said homestead application so as to embrace and include the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section twenty-six, and the west half of the northeast quarter of section thirty-five township seventeen north of range six east of Montana principal meridian, and that she filed such applica-

tion in the United States land office at Helena, Montana to enter said lands as a Homestead in said amended application.

Answering defendants further ADMIT on their information and belief that said amended application was approved.

IV.

Answering defendants further DENY that said lands, or any part thereof were mineral in character, or that they contained valuable deposits or any deposits of gypsum or fluxing lime rock or any other mineral deposit. They DENY that the defendant Jennie Peterson, then known as Jennie Benedict, entered said lands with full or any knowledge of its alleged mineral character. And DENY that she entered said lands for the purpose of fraudulently obtaining the title to said lands or to any part thereof, and they DENY that the said defendant William H. Albright, then or there, or at any other time had or now has any [34] knowledge of any alleged or any fraudulent intent on the part of said Jennie Peterson then known as Jennie Benedict in the premises.

V.

Answering paragraph fifth of complainant's bill of complaint these answering defendants allege that they have no knowledge as to what instruments or affidavits the said Jennie Peterson, then known as Jennie Benedict, filed in the said United States Land Office at Helena, Montana, at the time of filing her said application or as to what officers said affidavits were sworn to before, but that since it is the practice that affidavits of the character named in said para-

graph fifth of complainant's bill of complaint be filed to accompany applications, for homestead entry these answering defendants assume that affidavits, of the nature and character of those mentioned in said paragraph fifth as having been filed, were made and filed as alleged in said paragraph fifth. But these answering defendants DENY each and every other allegation, matter and thing in said paragraph fifth of complainant's bill of complaint alleged and contained.

VI.

Answering paragraph sixth of complainant's bill of complaint, these answering defendants DENY that any of the moneys paid by said Jennie Peterson, then known as Jennie Benedict, in or about the entry of said lands was not the money of the defendant Jennie Peterson, then known as Jennie Benedict. And DENY that said moneys, or the personal expenses of said defendant Jennie Peterson, then known as Jennie Benedict, or any part thereof, in making said entry [35] or for any other purpose in respect to said lands was furnished or paid, directly or indirectly, by the answering defendant William H. Albright, or by or through his agents or otherwise, in pursuance of said alleged unlawful agreement or otherwise, or at all.

VII.

Answering defendants ADMIT the allegations contained in paragraph seventh of complainant's bill of complaint.

VIII.

Answering paragraph eighth of complainant's bill

of complaint these answering defendants allege that they have no knowledge or information with respect to the proceedings had or taken by the said Jennie Peterson, then known as Jennie Benedict, at the time she made her final proof for the purpose of obtaining a patent to said lands, or when said final proof was made, or as to who were her witnesses at the time her said final proof was made; nor have they any knowledge of the matters and things testified to by the said Jennie Peterson, then known as Jennie Benedict, and her said final proof witnesses, and they leave complainant to its proofs in respect to the allegations contained in paragraph eight if complainant deems the allegations of said paragraph material.

IX.

Answering paragraph ninth of complainant's bill of complaint, these answering defendants allege that they have no knowledge or information as to the representations made by the said Jennie Peterson, then known as Jennie Benedict, and her final proof witnesses with respect to the nature and character of the improvements and cultivation of and [36] time of residence upon said lands at the time of making her said final proof, or as to what moneys were paid by the said Jennie Peterson, then known as Jennie Benedict, to the United States for said lands, but assume the fact to be that such proof and payment was in accordance with the laws of the United States in such case made and provided.

X.

Answering paragraph tenth of complainant's bill of complaint these answering defendants DENY

that the purchase money paid for said lands was not the money of the said Jennie Peterson, then known as Jennie Benedict, and DENY that said moneys, as well as the moneys paid for the land office fees in connection with said entry and the personal expenses of the said Jennie Peterson, then known as Jennie Benedict, and the personal expenses of her said final proof witnesses, and the expenses of her improvements, or any part thereof, were furnished or paid, directly or indirectly, by the defendant William H. Albright, or through his agents or otherwise in pursuance of said alleged unlawful agreement, or otherwise. They ADMIT that a final receipt No. 765 was issued to the said Jennie Peterson, then known as Jennie Benedict, and ADMIT that thereafter, on or about the 30th day of December, 1905, a patent was issued to said Jennie Peterson, then known as Jennie Benedict, for said lands, and that the issuance of said final receipt and patent was in reliance upon the truth of the matters and things stated by the said Jennie Peterson, then known as Jennie Benedict, and her final proof witnesses at the time her said final proof was made and accepted. These answering defendants, on their information and belief, DENY that [37] any false or fraudulent statements were made by the said Jennie Peterson, then known as Jennie Benedict, or her said final proof witnesses, in or about said final proof; but further alleges that if any false or fraudulent statements were made by or on behalf of said Jennie Peterson, then known as Jennie Benedict, that these answering defendants

or either of them ever had any knowledge thereof.

XI.

Answering paragraph eleventh of complainant's bill of complaint, these answering defendants DENY that the depositions of said Jennie Peterson, then known as Jennie Benedict, and her final proof witnesses were false or fraudulent, or that they were known to be such, or that they were made and filed pursuant to any fraudulent or other agreement between said Jennie Peterson, then known as Jennie Benedict, and the said defendant William H. Albright. Answering defendant William H. Albright alleges that the said Jennie Peterson, then known as Jennie Benedict, did establish her residence upon the lands aforesaid on or about the month of October, 1901, and that she claimed to be residing thereon from the time of establishing her said residence until after she had made her said final proof, and that she had placed thereon a house about 13x16 feet and a small barn about 12x14 feet, and that she had constructed about one mile of wire fence upon said lands, but as to the cost or value of said improvements this answering defendant William H. Albright has not sufficient knowledge to enable him to form a belief. And this answering defendant Villa C. Albright alleges that she has no knowledge in respect to the character or value of the improvements [38] placed by the said Jennie Peterson, then known as Jennie Benedict, upon said lands or in respect to her residence thereon.

XII.

These answering defendants further allege that

at the time said Jennie Peterson, then known as Jennie Benedict, established her residence upon and claimed to reside upon said lands they had no interest in said lands and had no knowledge of the acts and doings of the said Jennie Peterson, then known as Jennie Benedict, with respect thereto that would enable them to know how long the said Jennie Peterson, then known as Jennie Benedict, actually resided upon said lands, but that after said Jennie Peterson, then known as Jennie Benedict, had made her final proof and had obtained title to said lands, answering defendant Villa C. Albright, through her agent defendant William H. Albright, purchased said lands from the said Jennie Peterson, then known as Jennie Benedict, for the sum of EIGHT HUNDRED DOLLARS; which sum was paid out of the moneys of this answering defendant Villa C. Albright, and such payment was made in good faith and without any knowledge on the part of the answering defendant Villa C. Albright of any fraud perpetrated by said Jennie Peterson, then known as Jennie Benedict, upon the United States in or about the entry or purchase of said lands, if any such fraud was perpetrated in fact.

And this answering defendant William H. Albright alleges that he never had any agreement, either in his own behalf or on behalf of his codefendant Villa C. Albright, with the said Jennie Peterson, then known as Jennie Benedict, with respect to said lands prior to the actual purchase [39] thereof at the time the same was conveyed to the defendant Villa C. Albright, and that he never

furnished any money to the said Jennie Peterson, then known as Jennie Benedict, for filing upon said lands or for making proof thereon, or for paying the purchase price thereof, or for any part of the cultivation, or for making any of the improvements that were made thereon, and that he never had any dealings, directly or indirectly with the said Jennie Peterson, then known as Jennie Benedict, with respect to said lands until after she had made her final proof thereon, and acquired her title thereto, and that then she offered to sell the same to this answering defendant William H. Albright for the sum of EIGHT HUNDRED DOLLARS; and, being authorized so to do by his codefendant Villa C. Albright, he purchased said lands for said sum of EIGHT HUNDRED DOLLARS with the moneys of the said defendant Villa C. Albright. That if the said defendant Jennie Peterson, then known as Jennie Benedict, in or about the entry, purchase or her residence upon said lands, or her improvements thereon made any false or fraudulent representations to the officers of complainant or otherwise deceived or defrauded complainant, this answering defendant has no knowledge of any such acts on the part of said defendant Jennie Peterson.

And this answering defendant Villa C. Albright further alleges that she purchased said lands from the said Jennie Peterson, then known as Jennie Benedict, after the latter had acquired title to said lands, and for a good and valuable consideration, to wit: The sum of EIGHT HUNDRED DOLLARS, duly paid by this answering defendant Villa

C. Albright, through her said agent William H. Albright, and without [40] any knowledge or notice of any fraudulent acts of any kind or character perpetrated upon complainant or its officers by the said Jennie Peterson, then known as Jennie Benedict, if in fact such were perpetrated. And this answering defendant, Villa C. Albright, claims title to said lands under such good faith purchase and not otherwise.

And these answering defendants DENY each and every allegation, matter and thing in complainant's bill of complaint contained, not hereinbefore specifically admitted, qualified or DENIED.

WHEREFORE, these answering defendants, having fully answered complainant's bill of complaint, but without oath, because answer under oath was expressly waived, pray that said bill of complaint be dismissed; that complainant take nothing by its said suit; that complainant's said several complaints be found and determined to be of no force or effect as against the answering defendant Villa C. Albright, and that her title to said lands, and the whole thereof be quieted, and that the complainant be decreed to have no right, title or interest therein or thereto, and that she have such other and further relief as she shall be found in equity to be entitled, and that the answering defendants be dismissed hence with their costs and charges in this behalf expended.

WILLIAM H. ALBRIGHT.

VILLA C. ALBRIGHT.

COOPER & STEPHENSON,

Counsel for Defendants William H. and Villa C. Albright.

[Indorsed]: Title of Court and Cause. Answer.
Filed Feb. 5, 1912. Geo. W. Sproule, Clerk. [41]

Thereafter, on Feb. 17, 1912, Replication was duly
filed herein as follows, to wit:

*In the District Court of the United States, in and for
the District of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT
and VILLA C. ALBRIGHT,

Defendants.

**Replication to the Joint and Several Answer of the
Defendants William H. Albright and Villa C.
Albright.**

This replicant, saving and reserving to itself all
and all manner of advantage of exception which may
be had and taken to the manifold errors, uncertain-
ties and insufficiencies of the answer of said defend-
ants, and for replication thereunto sayeth that it does
and will ever maintain and prove its said bill to be
true, certain and sufficient in the law to be answered
unto by said defendants, and that the answer of said
defendants is very uncertain, evasive and insufficient
in the law to be replied unto by this replicant; with-
out that that any other matter or thing in the said
answer contained material or effectual in the law to
be replied unto, confessed or avoided, traversed or de-

nied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

JAS. W. FREEMAN,

United States Attorney, District of Montana. [42]

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT
and VILLA C. ALBRIGHT,

Defendants.

**Affidavit of Mailing [of Replication to Joint and
Several Answer].**

State of Montana,

County of Lewis and Clark,—ss.

E. Lieberg, being first duly sworn, deposes and says that he is the clerk to the United States Attorney for the District of Montana, residing at Helena, Montana; that the attorneys for the above-named defendants, Cooper & Stephenson, reside at the city of Great Falls, county of Cascade, State of Montana, and that there is a regular communication by mail between the city of Helena and the said city of Great Falls; that on the 17th day of February, A. D. 1912, at about the hour of four-thirty P. M. of said day, affiant deposited in the United States postoffice at the city of Helena, Montana, the original replication to

the joint and several answer of the defendants William H. Albright and Villa C. Albright in the above-entitled action, together with a copy thereof, which said replication and copy were inclosed in an envelope securely sealed and postage prepaid and addressed and directed to the said attorneys for the said above-named [43] defendants, Cooper & Stephenson, Attorneys at Law, Great Falls, Montana, to be delivered to the said Cooper & Stephenson as attorneys for the said defendants at Great Falls, Montana; that said original replication was so enclosed and forwarded to said Cooper & Stephenson for the purpose of securing acceptance of service of said attorneys, and the copy was for the files of said attorneys.

E. LIEBERG.

Subscribed and sworn to before me this 17th day of February, 1912.

S. C. FORD,

Notary Public in and for the State of Montana, Residing at Helena, Montana.

My commission expires Sept. 7, 1912.

[Indorsed]: Title of Court and Cause. Replication. Filed Feb. 17, 1912. Geo. W. Sproule, Clerk.
[44]

Thereafter, on March 22, 1912, an order *pro confesso* as to defendant Jennie Peterson was duly filed and entered herein, being in the words and figures following, to wit:

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT
and VILLA C. ALBRIGHT,

Defendants.

**Order Pro Confesso as to Defendant Jennie Peterson,
Formerly Jennie Benedict.**

It appearing that an order was duly made in the above-entitled cause on the 9th day of December, A. D. 1911, requiring and directing the defendants to appear in the District Court of the United States in the city of Helena, State and District of Montana. on the 1st day of January, 1912, and then and there to plead, answer or demur to said complainant's bill of complaint exhibited against the said defendants in said court by the complainant, and to receive what the Court should consider in said behalf; and

It further appearing that said order so made as therein required and directed was served on the defendant Jennie Peterson (formerly Jennie Benedict) personally on the 13th day of December, 1911, four miles west of Logging Creek, Cascade County, Montana; and

It further appearing that the said defendant Jennie Peterson (formerly Jennie Benedict) has failed to appear in this suit either personally or by counsel

and that the time to plead, answer or demur to said complainant's bill of complaint has expired: [45]

Now, therefore, on motion of James W. Freeman, United States Attorney for the District of Montana, and solicitor for the complainant,

It is ordered that the complaint in said cause as to the defendant Jennie Peterson (formerly Jennie Benedict) be taken *pro confesso* against said defendant Jennie Peterson (formerly Jennie Benedict) in accordance with the rules in such case made and provided.

Dated the 22d day of March, 1912.

J. W. FREEMAN,

United States Attorney, District of Montana.

[Indorsed]: Title of Court and Cause. Order *Pro Confesso* as to Defendant Jennie Peterson. Filed and Entered March 22, 1912. Geo. W. Sproule, Clerk. [46]

Thereafter, on Jan. 14, 1914, Decree was filed and entered herein, in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants.

Decree.

In this cause the proofs having heretofore been taken and reported to the Court, and the cause having been duly argued by counsel for complainant and defendants and submitted to the Court, and the Court having duly considered the cause, and having heretofore on the 19th day of August, 1913, found and determined that the evidence taken in said cause is not sufficient to sustain the allegations of the complaint, and that said complaint ought therefore to be dismissed, on motion of Cooper & Stephenson, attorneys for defendants,

IT IS ORDERED, ADJUDGED and DECREED that complainant take nothing by its said complaint in this action, and that said cause be, and the same is hereby dismissed, and that the title to the lands which constitute the subject matter of the action be quieted in the defendants herein having title to the lands involved, their heirs and assigns, as prayed for in their answer herein.

Done in open court this 14th day of January, 1914.

GEO. M. BOURQUIN,

District Judge.

[Indorsed]: Title of Court and Cause. Decree. Filed and entered Jan. 14, 1914. Geo. W. Sproule, Clerk. [47]

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby

certify that the foregoing papers hereto annexed constitute the judgment-roll or final record, in the above-entitled action.

Witness my hand and the seal of said court at Helena, Montana, this 14th day of January, 1914.

GEO. W. SPROULE,
Clerk.

[Indorsed]: Title of Court and Cause. Judgment-roll. Filed Jan. 14, 1914. Geo. W. Sproule, Clerk. [48]

That on August 18, 1913, the Court's Decision was duly rendered and filed herein, in the words and figures following, to wit:

[Opinion.]

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON et al.,

Defendants.

Herein, the Court finds the allegations of the bill of complaint are not proven, and therefrom concludes the bill should be dismissed. Decree accordingly.

August 19, 1913.

BOURQUIN, J.

MEMO.

The Court refers to its comment in the companion case, No. 226, United States vs. Charles Gustafson et al.

The evidence herein falls short of the high degree of proof the Government must produce to warrant cancellation of its executed contract, its patent and grant of title. It may be the truth is as complainant alleges, but the evidence in quantity and quality does not satisfy and convince the court it is so. It serves to arouse suspicion it may even preponderate in favor of complainant, but that does not suffice. It may be fraud triumphs and the guilty escapes, but that does not warrant a contrary conclusion herein. When the Government deliberately issues its patent to lands, the instrument is high and solemn evidence of its own validity, to be overcome only by clear and convincing evidence, in quantity and of quality which commands respect and produces conviction. Peterson does not commend herself to credibility.

There are no circumstances to corroborate Peterson. Ticket, letters, etc., of which she speaks, rest on her [49] testimony. Albrights deny her statements. Her insistence that her lands should have water thereon is inconsistent to some extent with an agreement with Albright. She may have had some such arrangement as Carter. Albright's books are inconsistent with her testimony that he paid all her expenses on the land. If as Whittaker says many of Albright's quarrymen were taking up lands for Albright, why should he have sent to Michigan at his expense for Peterson?

Upon the whole, the proof fails.

[Indorsed]: Title of Court and Cause. Court's Decision. Filed Aug. 18, 1913. Geo. W. Sproule, Clerk. [50]

That on the 11th day of April, 1912, an order appointing a Special Examiner to take the testimony was made and entered herein, as follows, to wit:

**[Order Appointing Special Examiner to Take
Testimony, etc.]**

No. 1091.

UNITED STATES

vs.

JENNIE PETERSON et al.

Upon motion of the United States Attorney, it is ordered that Dudley Crowther, Esq., of Great Falls, Montana, be and he hereby is appointed Special Examiner of this court to take the testimony in the above-entitled cause and report the same to this court.

Entered, in open court, April 11, 1912.

GEO. W. SPROULE,
Clerk. [51]

That on May 20, 1912, a Stipulation as to the testimony herein was duly filed in said cause, in the words and figures following, to wit:

*In the District Court of the United States for the
District of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON, WILLIAM H. AL-
BRIGHT and VILLA C. ALBRIGHT,
Defendants.

Stipulation [Re Taking of Testimony, etc.].

It is hereby stipulated and agreed by and between the parties to this action, by themselves, or through their respective counsel, that the testimony herein may be taken in shorthand by Dudley Crowther, and thereafter reduced to typewriting, without requiring the witnesses testifying before him as Special Examiner to subscribe said testimony, and the transcript of the testimony of such witnesses, when completed and certified by the said Dudley Crowther as to its correctness, shall be considered by the United States District Court as the testimony of said witnesses as fully and effectually as though the same were in fact subscribed by them.

Dated April 24, 1912.

S. C. FORD,

Asst. U. S. District Attorney, Counsel for the Complainant.

COOPER & STEPHENSON,

Counsel for the Defendants William H. Albright and Villa C. Albright.

Filed May 20, 1912. Geo. W. Sproule, Clerk.
[52]

That on February 19, 1914, notice of motion to approve statement of evidence on appeal was duly filed herein, as follows, to wit:

In the District Court of the United States, District of Montana.

IN EQUITY—No. 1091.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants.

Notice [of Motion to Approve Statement of Evidence on Appeal].

To Messrs. Cooper and Stephenson, Attorneys for William H. Albright and Villa C. Albright, Two of the Above-named Defendants, and Jennie Peterson, Defendant:

YOU WILL PLEASE TAKE NOTICE that the undersigned, solicitor for the complainant and appellant herein, has this day lodged with the clerk of the aforesaid court complainant's statement or proposed record of the evidence on appeal herein, and that at the city of Great Falls, in the State and District of Montana, on the 2d day of March, A. D. 1914, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned will ask the Court or Judge to approve the aforesaid statement

of the evidence on appeal herein.

Dated this 17th day of February, 1914.

B. K. WHEELER,

United States Attorney, District of Montana, Solicitor for Complainant.

Due service of the foregoing notice is hereby admitted this 17th day of February, 1914.

COOPER & STEPHENSON,

Solicitors for Defendants.

[Indorsed]: Title of Court and Cause. Notice. Filed Feb. 19, 1914. Geo. W. Sproule, Clerk. [53]

That on February 17, 1914, a Statement of the Evidence on Appeal was duly approved and filed herein, in the words and figures following, to wit: [54]

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants.

Statement of the Evidence.

BE IT REMEMBERED that the above-entitled action was upon motion of the United States Attorney referred to Dudley Crowder, Esq., by an order of

the above-entitled court duly made and entered in the above-entitled cause on the 11th day of April, 1912, which order appointed said Dudley Crowder, Esq., special examiner of this court to take the testimony herein and report the same to this Court.

That the parties to the above-entitled action on the 24th day of April, 1912, stipulated through their counsel that the testimony herein should be taken in shorthand by Dudley Crowder and thereafter reduced to typewriting without requiring the witnesses testifying herein to subscribe said testimony and that transcript of the testimony of such witnesses, when completed and certified by the said Dudley Crowder as to its correctness, should be considered by the above-entitled court as the testimony of said witnesses, as fully and effectually as though the same were in fact subscribed by them. [55]

Pursuant to the order above mentioned the above-entitled cause came on for hearing by agreement of counsel, on the 23d day of April, 1912, and was, by consent of counsel, continued until April 24, 1912, at the hour of ten o'clock A. M.

That on said 24th day of April, 1912, at ten o'clock A. M., the said cause came on regularly to be heard before Dudley Crowder, special examiner, as aforesaid, at his office in the city of Great Falls, Montana, the complainant being represented by Mr. S. C. Ford, Assistant United States Attorney, and the defendants, Wm. H. Albright and Villa C. Albright, being represented by Messrs. Cooper & Stephenson. The following proceedings were had and the following

testimony was given by the respective witnesses, to wit:

[Testimony of Jennie Peterson, for Plaintiff.]

JENNIE PETERSON, being first duly sworn as a witness for and on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. FORD.)

My name is Jennie Benedict Peterson. I was formerly Jennie Benedict and married Mr. Peterson in November, 1905. I am the person who made homestead filing near Albright, but I cannot describe it. I made my homestead application about the 9th, 10th or 11th of July, 1901. At the time I made my homestead filing on the land, I had never seen it. I had been working at Mr. Albright's when I was younger and there were several parties taking homesteads for him and I said: "When I get old enough, I would like to take up a ranch." This was at the table at Mr. Albright's. I do not remember whom I made that statement to. Mrs. Albright might not have been present that year, but there were a great many present—a couple of other ladies who were working there. Just in common conversation I said I would take up a homestead for Mr. Albright. This must have been when I was about eighteen years old. After that [56] I worked for Mr. Albright for two and half year before I filed on my homestead, not continuously but a few months in the spring. I had been living with my mother in Michigan just prior to filing on the land. Two or three months

(Testimony of Jennie Peterson.)

before coming west to file on the land, I had some correspondence with Mr. Albright. I have not got the letters I received from him, but I remember the substance of them. I suppose the letters were destroyed; I never keep old letters packed up in my trunk. They were destroyed—I was at home and I think my mother read the letter. The contents of one letter I remember; Mr. Albright wrote to me and said he understood that I wanted to come west again and that I was old enough and could file on a homestead, and that he had a piece of land in view and if I decided to come west again to let him know and he would send me a ticket, which he did. I answered his letter and he later sent me a ticket to Crosswelle, Michigan. I used the ticket, leaving Michigan July 5, 1901. I went to the Great Falls Hotel and I saw Mr. Albright in that town. His family was also in town. I had written Mr. Albright a letter about the time I would leave Michigan. When I met Mr. Albright in Great Falls, he told me the papers were ready in Prior's office, and I went in there and filed on my homestead, or was supposed to file on my homestead. I had not been on the land; did not know where it was located; did not direct Mr. Prior to prepare the papers; and I did not have anything to do with the preparation of the homestead filing. I don't know who paid Mr. Prior for his services—I didn't. I don't recollect filing the papers in the land office but I may have, if the land office was in a room on Third Street and Central. I did not pay the filing fees and do not know who paid them. I wanted to take up a

(Testimony of Jennie Peterson.)

homestead with water on and Mr. Albright said I could. Mr. Albright and I discussed what I was to receive for the land when I proved up on it. When I filed on this land I was to commute and prove [57] up on it at the end of fourteen months, and I was to receive \$640.00, or the same as the rest of them would receive for their homestead right, and if I kept it for five years, which I tried to do, Mr. Albright says he might do even a little better by me, because it would not cost so much to prove up on it. At the time we were in Great Falls, when I made my homestead entry, he said I was to receive the same as the rest of them that took up homesteads. I understood that was \$640.00. Mr. Albright would pay the expenses during the life of the entry; he built the house for me. After making my entry sometimes I worked at Mr. Albright's and sometimes I lived on my homestead. I did not live there much during the year 1901. In the early spring of 1902 I visited the ranch—the cabin was then completed. I never had anything to do with building the cabin. I resided on the land most of the summer of 1902. I had my trunk there and called it my home—I lived on there. There wasn't a week I wasn't there. I was there for two weeks at a time, steady. Part of the time it wasn't a very busy season. I was working at Mr. Albright's. When I lived upon the land Mr. Albright furnished me with provisions. That was part of his agreement, at the time I made the filing; he was to pay all expenses. I knew Mrs. Albright; she lived with Mr. Albright. She knew where I was working.

(Testimony of Jennie Peterson.)

She and I often spoke about the land and she said they would have lots of land for the boys. She made other statements concerning my entry depending how she felt; sometimes she spoke favorably of it and other times called it a lot of worthless land. She never heard the agreement I had with Mr. Albright but it was understood that Mr. Albright was to buy the land. She knew that. I have heard her make statements like this, that the boys would own the land upon that hill, or on the bench, that they would have a nice ranch for the boys. That land embraced about all our homesteads. Willie, one of the children, visited me on my ranch once in a while; I think he [58] was six or seven years old. I never heard his mother say anything to the child in particular, only that he could be a rancher; she used to joke that he would be a rancher. He might start in early and be living on the ranches up there some day. During the time I lived on the land and during the life of the entry, I never paid out anything for expenses in the way of improvements. I could not state who did the labor, but I think Peter Parker and Gustave Herman put up the cabin. I submitted final proof in August, 1905; Mr. Quick and Mr. Benson were my witnesses. I had another man there for witness, but I did not use him. I went over for Mr. Quick at Mr. Albright's request to get him as a witness. I did not pay the expenses of my witnesses; Mr. Albright gave me money to pay Mr. Benson; he gave me ten dollars to pay him, the one I did not use. This was in the Grand Hotel. Mr. Peterson, Mr. Albright and I

(Testimony of Jennie Peterson.)

were there. I don't know that the other witnesses were paid. I don't know where the final proofs were prepared or who made them. I had nothing to do with them; I don't know at whose request they were prepared; I did not do it. I suppose I went to the land office in the courthouse to sign the final papers. I don't know who was present. Mr. Albright might have been in the corridor. I did not pay the filing fees or the fees on final proof. I made commuted proof. Mr. Albright gave me the money; I didn't furnish the money. Mr. Albright gave it to me. He gave me \$150.00 in cash. I used that in paying the filing fee. After my final receipt came I transferred it to Mr. or Mrs. Albright. I did this in Great Falls at Mr. Prior's office. He and Mr. Williams prepared the deed. Mr. Albright told me to have the papers made out to Villa C. Albright, as he desired the property in her name for a while yet, all his property in her name. I got \$600.00 for the land; \$500.00 in a note of Mr. Albright and \$100.00 either in cash or by check. The note was signed by W. H. Albright. He did not sign as agent for Villa C. Albright; I never had any dealings with Mrs. Albright in [59] any regard; none of the business was in Mrs. Albright's name except the taking of the deed. The note was paid the next May by Mr. Albright to Mr. Peterson. I do not recollect any other conversation with Mrs. Albright with reference to my land or taking it up for Mr. Albright, other than what I have already told; it was generally understood among us all who took up land there; it was generally understood with

(Testimony of Jennie Peterson.)

Mrs. Albright that the land was being taken up for Mr. Albright or them.

I had another land transaction with Mr. Albright; I filed on a timber and stone claim for Mr. Albright in the spring of 1907. I had an understanding with him about that land; I proved up on it and he paid me for it; I don't know that I got title to it. Mr. Albright paid the expenses of filing and also the purchase of the land. I don't recollect exactly how much I got for making the filing, but I think it was some \$300 and some dollars. There was a check and the balance in cash. Mr. Peterson and I deeded the land to Villa C. Albright at Mr. Albright's request. Mr. Albright's name was signed to the check I received. Mrs. Albright's name was not on the check. I never had any transactions with her; she was living at Great Falls at that time.

There was a man on the bench who relinquished his desert claim to me; I had the relinquishment, but I think in my suit-case—it may be at home; I will look for it. This man who relinquished was Mr. Lavelle; he was paid a consideration. I do not know how much. The purpose in getting him to relinquish the land was so I would also have a desert claim joining my homestead. It was Mr. Albright who got Mr. Lavelle to deed me or sign over his relinquishment to me. We didn't exactly have an understanding about the amount I was to receive for the land after I had acquired title. I was to transfer when I did my homestead. Whenever I proved up on it. I don't remember how I made my desert

(Testimony of Jennie Peterson.)

filing on the land, but I think Mr. Albright had part of those filings put in my homestead; I had my homestead filings changed to embrace some of this desert. [60]

This is my signature to my homestead application (referring to Complainant's Exhibit 1), and this is my signature to the nonmineral affidavit, and this is my signature to my homestead proof (all referring to Complainant's Exhibit 1.)

Cross-examination.

(By Mr. STEPHENSON.)

Prior to my last coming to Montana, I did more or less work for Mr. Albright; I didn't work there in 1905; I spent six or seven months of that time on my homestead. I came from Michigan before filing on my homestead and prior to going to Michigan I had worked for Mr. Albright. I don't remember how much of the time I worked for him, because my grandfather lived on the bench, part of the time I was at my grandfather's. Sometimes I worked for Mr. Albright, but I worked different places. I am well acquainted with Mrs. Albright. I had been in Michigan about two years before returning to Montana in the summer of 1901. Mr. Albright wrote to me and told me that if I still wanted to take up homestead for him I could come back and they would give me work and I could prove up on it. I am certain he said: "If I still wanted to take up a homestead for him," I am sure of the words "for him." It is ten years since I saw that letter.

(Testimony of Jennie Peterson.)

I might have left it in Michigan as I never thought I would need it in the future. I left it in what was then my home—my mother is still living there; I never asked her to search for those letters and the letters may still be there, but I think it likely they are destroyed. The letter was written in Mr. Albright's handwriting. Not many weeks after that I received a letter saying he would send me a ticket to come to Montana on, and he later sent me the ticket. He said I could work for Mrs. Albright and I went to work for her right after Christmas. From July to December I stayed at my grandfather's ranch most of the time; I helped him; I had my hand cut and I didn't work much that summer. The Albrights [61] wanted me to work for them as quick as I was able to; I worked for them the remaining part of that winter and the following spring and summer. They have had different people employed; it was very agreeable place to work at times; we got along very well; it was a very lonesome place and they had difficulty in keeping help; my relatives lived in that vicinity. I don't know that I would rather *work than* other places; I worked at other places a good deal. I do not know whether the Albrights believed that I would stay more willingly than other people they could get who didn't have any connection in that vicinity. One of the inducements they made to me was that I could take up a homestead. I wanted one with water on it. I wanted a place with water so if I was ever left with it on my hands I

(Testimony of Jennie Peterson.)

could dispose of it; I could always get money on it from some place. I never intended to make a home on the place, and didn't want water on it for the purpose of making a home. I didn't know whether the water was on my homestead or desert, but I used the water, anyway.

I was born in Michigan, but did not understand the English language in a business way, at the time I filed on my homestead; I understood ordinary words. When I went into Mr. Prior's office, I was asked to sign some papers to make my homestead filings; I don't recollect that I read those papers, but I was told they were my homestead filing. I took my oath, that I was of age and born in Michigan, etc. Mr. Prior or some other gentleman asked me questions separately; I don't recollect who swore me, but I think it was Mr. Prior or Mr. Williams; it was right in the office; their offices don't seem familiar to me. I don't know whether I went to Mr. Cockrell's office; I know the place I was in, it was on Third Street, the corner there some place; I don't know the gentleman's name. The papers were made out and I signed them, but I don't recollect of them being read to me; they may have been. [62] I understand that whatever was in that paper I was swearing to be true; if they were read to me, I would understand that much. I don't recollect whether Mr. Cockrell asked me whether the statements were true. The statements in that paper which I swore were true were for the benefit of my pocketbook, and otherwise I didn't

(Testimony of Jennie Peterson.)

think anything about it. I knew I would do homestead duty which I did, and I lived on the place plenty. I told Mr. Albright that I would turn the ranch over to him on the same terms that he was giving the rest; by the rest I mean Peter Carter, August Enger, and Herman and Olive, and a few more I don't know. I think some had homesteads and some had proved up. I made a verbal agreement with Mr. Albright. I told Mr. Peterson that if I kept that ranch another year before I proved up on it, or kept it for five years, that Mr. Albright would never get it, and he told me to keep my word and come up to my agreement. That was just a few months before we were married. When I came from Michigan I went to the Great Falls Hotel; I met Mr. Albright on the corner of the street, and talked with him there in Great Falls the day after I arrived. The first thing Mr. Albright said was that he had the homestead papers ready to file; I could file on my homestead at once, papers were ready. *I been* through that country on horseback before when I was younger, but did not know the country from Mr. York's to Riceville; it wasn't familiar to me at all. Mr. Albright also said to me at that time that I could come and go to work later. I did not want to work just at once; I wanted to go out to my grandfather. I had my hand cut and I went to work at Mr. Albright's later. Mr. Albright told me at that time that he had the papers all ready for me to sign at Prior's office. He went there with me. I met him in the morning and we went to the office in the

(Testimony of Jennie Peterson.)

afternoon. He told he would fix my price for my homestead all right and would give [63] me the same as the rest of them. That was all that was said; I had not asked him what price he would pay, I understood that to be \$640.00. I said all right. I wanted to take up the homestead because I thought it would be a nice way to make the money. Mr. Albright did not give me to understand that when the homestead was proved up that he would buy it if I wanted to sell. It was his. I was to prove for him. It would do me no good—a piece of land upon a hill.

I am related to Frank Whittaker. I never asked Mr. Albright to give me a \$1,000. My husband never attempted to get a thousand dollars from Mr. Albright, and neither have I. Mr. Albright had used my name many times in rock claims or rock filings, and I had never recollected of deeding any to him, and when I used my name he always said that he would give me so much in a claim. There was no specified sum of money. He owed my husband and myself for some claims that we had previously signed to him. That was after Mr. Albright sold out. Mr. Albright said there was one claim on the paper and there were five or six. I didn't have any dispute with him; he finally paid Mr. Peterson and me for deeding the claims to him. I never wanted any more money than I got. There was no hard feelings between Mr. Albright and me until this case came up. Then Mr. Albright abused me one day on the road. Before that we had been more or less friendly; often Mr. Albright would get peculiar

(Testimony of Jennie Peterson.)

moods and notions in his head and we might have a little trouble, but we always adjusted that.

At the time he made the purchase of this land he paid me by a five hundred dollar note and he gave me some cash or checks. I don't recollect the details but I remember the note distinctly; that was in September or the last of August, 1905. [64] I was to receive \$640 for my homestead and the note was only for \$500; perhaps I received \$100 or more in addition; I don't recollect the amount exactly. Mrs. Albright said all her boys would be ranchers living out there sometime. Mrs. Albright spoke about the land I was holding in general with the other as a lot of worthless land and other times she would say she was glad that they were getting so much land for the boys. There was no discussion other than in general that my land belonged to them; it was an understanding—she knew as well as all of us knew. The bargain was not made with Mrs. Albright; it was with Mr. Albright; she didn't do any business, he did. She and I never had any discussion as to the price or my obligations to turn over the land, but she knew of it all right, because it was common conversation down there. Between Mrs. Albright and myself it was understood perhaps about my not being a rancher for long, that Mr. Albright or the boys would own the land pretty soon; they would own the whole country up there pretty soon. Mr. Albright had been buying considerable land up there. Everybody that had proved up turned over their land to him. I made my commutation

(Testimony of Jennie Peterson.)

proof in the land office; I don't know the name of the man; Mr. Albright was in town; I was in the room alone; I remember Mr. Burlingame was there. The gentleman I proved up before wrote my testimony; he read the questions; I answered them and he wrote the answers in. I answered the questions just as Mr. Albright told me to; he furnished me with a copy of the questions, or told me the questions they would ask, and I answered just as I was told to. I understood that I was swearing to that. No one has told me how to answer any questions here to-day. I took the land up for my own benefit, for the benefit of my pocketbook, for the money I was to get; I had already agreed to sell it to Mr. Albright. I couldn't tell whether I had sold it until [65] I had made my final proof. When I made my final proof and swore "Jennie Benedict being called as a witness in *his* own behalf in support of entry No. ———, etc." I knew better than to tell the man at the land office anything about the arrangement I had had with Mr. Albright; Mr. Albright told me not to say anything about it. I didn't have any property except a horse and Mr. Albright told me *that would* ask if I had any stock and he told me that he would give me a bill of sale for two cows, which he did and after I came out of the land office I handed the bill of sale back to him. So I owned those cows for a short length of time. I don't know that I knew what the word "alineated" meant and I didn't inquire when I swore to my affidavit. My husband and I haven't discussed the testimony that

(Testimony of Jennie Peterson.)

should be given at this hearing. I don't know who preferred charges against this homestead; Mr. Bennett was at our house some time last spring. He said he knew all about it and that I had never lived on it, but I told him I had and I don't know where he got his first information. I know he didn't get it from my husband. I don't know whether Frank Whittaker had written to Mr. Bennett or not; he was with Mr. Bennett and that was the only time Whittaker had been to our house. At that time Mr. Bennett contended that I had not lived on my homestead; I don't know whether others did or not. I had resided there sufficiently to call it my home. Mr. Albright was hard up he said and he asked me if I would take his note, and I said yes, I would take his note. Mr. Peterson told me to have the note made out with eight per cent interest. I don't know where Mrs. Albright was at that time, whether she was at the quarry or whether she was at home, I don't know where she was. I don't know whether Mrs. Albright was away on a visit some place out of the State or not, because I didn't work at Mr. Albright's during the year 1905. Mr. Albright did not give [66] me the explanation that Mrs. Albright was away and ask me if I was willing to take the note; he never considered Mrs. Albright when he went to do business; Mr. Albright was the one that did the business.

(Testimony of Jennie Peterson.)

Redirect Examination.

(By Mr. FORD.)

I went on the land Valentine's day and I filed my final proof in August, I think. I lived on the land the summer of 1902; my trunk was there and all my belongings at that time, the summer of 1902. We had often *spoke* Charles Gustafson's homestead—Mr. Gustafson and I. I had some conversation with Mr. Albright with reference to the Gustafson claim. Mr. Albright told me to ask Gustafsons if they intended to prove up on that piece of land, as he wasn't very friendly at the time with Mr. Gustafson, and I said I would, because Mr. Albright says, "If he does not, he can relinquish it and I can get somebody else to file on it." I inquired of Mrs. Gustafson as I had been directed by Mr. Albright, and I conveyed her response to Mr. Albright. I never talked to Mrs. Albright about the Gustafson claim. Gustafson's claim was included in the general conversations I had had—it was just "the land" up there. Mrs. Albright couldn't help but know that the land had been taken up for Mr. Albright, because she was always there when some conversations would be made about it. Generally she would say that that land was taken up "for us."

[Testimony of Peter M. Carter, for Plaintiff.]

PETER M. CARTER, being first duly sworn as a witness for and on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. FORD.)

My name is Peter M. Carter; I live in Butte. My occupation is concentrating. I am acquainted with the defendant William H. Albright. I have known Mr. Albright about twenty years, I guess. [67] I have been in his employ, but I don't just remember during what period of time. I have lived at Albright, Montana. I was employed by Mr. Albright at the fluxing quarry at Albright in the capacity of master mechanic there. I filed on a homestead in the vicinity of Albright. I don't just remember when I made my filing; I think it is about nine or ten years ago, somewhere along there. Prior to the time that I made my homestead filing Mr. Albright and I talked over with reference to whom the title should pass when I acquired it from the Government. In case I did not want the land I took up, Mr. Albright was to take it off my hands. We had no particular contract in any way as to who should pay the expenses. Mr. Albright paid the expenses. There was just a small house placed upon the land. Mr. Albright furnished the material, put up the building. I built the house myself. During the time I was employed in the construction of the house I was in Mr. Albright's employ. During the time I was working on the house, I suppose I was being paid by Mr. Albright—salary went right along just the same all the time. During the

(Testimony of Peter M. Carter.)

time that I was supposed to be living on the property I was working for Mr. Albright. I don't remember how much of the time I lived on the entry; I would run up to the ranch every once in a while. I never actually established my residence on the homestead—never moved my belongings up there. I have stopped there, and go up and stayed occasionally on the ranch. After I had made my final proof and received my final certificate I sold it to Mr. Albright for \$640.00, I think it was. I had this agreement to transfer the property to Mr. Albright prior to the time that I filed; we talked it over in that way. I was to file on the land and he would pay the expenses, and when I acquired title I was to transfer it to him. I transferred the property to Mr. Albright, I think. [68]

Cross-examination.

(By Mr. STEPHENSON.)

It was about the understanding that Mr. Albright would take the land off my hands if I did not want it when I proved up. If I wanted the land there was no obligation upon me to transfer it to Mr. Albright. I really don't know if I bound myself to transfer it to him absolutely; I understood that he was going to pay \$640 if I wanted to sell it after I proved up. And he left me free to sell or not to him. It took four or five days to build the cabin; I don't know how far it was from the quarry where I worked as a master mechanic. I worked there every day, including the time I was building the house. There was nobody took my place in the quarry when I was off. I worked for Mr. Albright about two years be-

(Testimony of Peter M. Carter.)

fore I made the filing. I proved up at the end of fourteen months—commuted. I don't know anything about anyone else's affairs there.

Redirect Examination.

(By Mr. FORD.)

I did not bind myself in any way to absolutely transfer the title I might acquire from the United States to Mr. Albright before I received final receipt. I had been on the ground before filing on it; I knew the description and where the place was when I filed on it; I knew it well enough to describe it by legal subdivision—I could not do that now. I knew where the place was.

Recross-examination.

(By Mr. STEPHENSON.)

After I proved up I think I mortgaged it to the Cascade Bank. I deeded it to Mr. Albright within a few months after I had gotten my final deed.

**[Testimony of Jennie Peterson, for Plaintiff
(Recalled).]**

JENNIE PETERSON, recalled on behalf of complainant. [69]

Direct Examination.

(By Mr. FORD.)

That is the release and assignment of my desert entry that Mr. Albright secured for me.

Mr. FORD.—I desire to offer in evidence Complainant's Exhibit No. 3.

Mr. STEPHENSON.—No objection.

WITNESS.—(Continuing.) I believe the conver-

(Testimony of Jennie Peterson.)

sation I had with Mr. Albright about this suit was since New Year's; I was on the road going from my home to Albright postoffice; Mr. Albright said I was in for it, and he wanted to know what I was going to do about it. I said I was going to tell the truth and he told me I might get twenty years in the penitentiary if I said I took it up for his benefit because before I swore I took it up for my own benefit. I told him I would have lots of company if I went. I don't care to repeat the rest he said because it wasn't fit for anyone to hear. He told me to do the right thing when I testified. I don't know what he meant by the "right thing"; he didn't explain. He said he would make me a present. He said I must testify that I did not take it up for him and he didn't make any bargain with anybody. I would rather not tell what the conversation he said was. It wasn't fit for a dog to hear or a lady to repeat. It was abusive. The reason he talked that way was because his attorney had discovered that I put my name on those papers for Mr. Bennett, and that was what the trouble *the* started over.

Cross-examination.

(By Mr. STEPHENSON.)

He told me his attorney had discovered in town—I don't remember whose office he said he was in—but his attorney had discovered that I had signed papers to the effect that I took up the homestead for Mr. Albright and he said that there were one [70] or two men in there and they said, "Oh, what a damn fool Peterson must have been, allowing her to sign

(Testimony of Jennie Peterson.)

such a paper as that; that she would get at least twenty years in the penitentiary," and he said other things, and I informed him that Mr. Peterson didn't have anything to do with this, for he did not.

[Testimony of Frank C. Whittaker, for Plaintiff.]

FRANK C. WHITTAKER, sworn as a witness for and on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. FORD.)

My name is Frank C. Whittaker; I make Great Falls my headquarters when here; I am a mine owner and own some land; I have known Mr. William H. Albright for sixteen or eighteen years. During that time he lived by a place called Albright postoffice. I know Mrs. Albright, Charles Gustafson and Jennie Peterson. I worked for Mr. Albright in about 1900 and was working with him as partner on things for six or seven years. I was interested with him in some mining claims. I am acquainted with the Jennie Peterson homestead; I first knew it about 1901 when Mr. Albright had talked to me about it and getting her to take up some land. I had my first conversation about Jennie Peterson with Mr. and Mrs. Albright about April, 1901. We three talked it over and thought it would be a good thing to get her to come out and take up land for Mrs. Albright. She thought it would be a good thing and had no objection; we could send for her. We had these conversations in April, May and June. Jennie Peterson—her name was Benedict then—was in Michigan. Mr.

(Testimony of Frank C. Whittaker.)

Albright suggested he would send her a ticket to come with and some money for expenses; first, that he was to ask her if she would come; she said she would, and he wanted to know if it was all right with me; I said, yes, and talked with Mrs. Albright and she thought it would be all right to have her come and keep books and take up some land. Miss Benedict came from Michigan and Mr. Albright met her here and had a description for [71] her to file on and showed her the description. Before that we staked and measured out the land with a compass; took a spirit level and spaced off about so far what *we about* 160 acres, and put up three or four rocks in place so we would know about where it was, and sometimes set a stake over on the side on the corner.

I know Miss Benedict took this homestead up for Mrs. Albright because Mr. and Mrs. Albright and I talked *about*; Albright said that he had to have it taken and signed over to Mrs. Albright so that it would clear him if there ever was any kick by the Government getting after him, and he said they could tackle the patent if it was transferred to Mrs. Albright. I know that to be a fact and talked about it. I heard them talk to one another; we three had a conference together. They said Miss Benedict was to receive \$750.00 when she got patent. There was a difference made her than some other people who had taken up land and sold to Mr. Albright; before she got patent she was to get the same as the rest; \$640.00, \$440 clear and he would furnish the *money commute* with. That if she would stay on the land 5 years

(Testimony of Frank C. Whittaker.)

and not commute he would give her \$750.00. There were improvements on the Jennie Peterson homestead. *They were* a board house about 12 by 14, maybe 12 by 16, a rather small one, and the stable is 10 by 12, or 12 by 14; no bigger than that. It was enclosed with a fence with several homesteads and mineral claims. It was not fenced by itself at first; afterwards another fence was put across, about the time she proved up. Mr. Albright built the improvements; Mr. and Mrs. Albright told me that they were paying for the improvements the same as they did for all the rest. After Miss Benedict filed on the land until she submitted final proof; two-thirds of the time she was working for Mr. and Mrs. Albright in the quarry keeping books, and I believe she went back to Michigan once on a visit; I don't know [72] where all, but I should judge two-thirds of the time or more during these several years keeping books for Mr. Albright, and then she stayed a few days on her ranch. Just before she proved up on it, I should judge she lived on it two or three weeks. She did not put no expense of her own, or nothing. She went up there and stayed night or two, perhaps five times during these years. Before the five or six weeks she went up there just before her final proof, that is the last time, she took up a few things. Prior to that time Mr. Albright would give her a horse from the quarry and some *some* grub and she would go up and stay over night. I know when she went up there for the three to five weeks that Mr. and Mrs. Albright told her to take provisions out of the kitchen

(Testimony of Frank C. Whittaker.)

and when they sent me up there once so that I could be a witness that I saw her living on the land, I took some things. Mr. and Mrs. Albright sent me up and said in case there would be any trouble I would be a witness that I saw her on the homestead. I got the provisions I took out of the Albright's kitchen. I have heard Mr. Albright talk about her taking up the land after she got back from Michigan and filed on it, and in my presence. I was acquainted with Mr. Gustafson; I have *known somewheres* about seventeen years, I think. I know the land he filed on as a homestead. I know pretty near the time when Mr. Gustafson filed, but I couldn't tell you exactly right the date; it would be about 1902, I think; I think it was after Jennie Peterson or Jennie Benedict had made her filing, I think, if I ain't mistaken. I know how he came to take up the land. Mr. Albright called Mrs. Albright in the front room and suggested to her they had better have Charley Gustafson take up land for her and asked what she thought, and she said yes, it would be all right, and seemed to be pleased. Then he said, "Frank and I will go up and stake it out and look it up," and he asked me different questions about coulees, where the best land was, and I told him about the coulees, and then we went up and looked at it and took a spirit level and staked it [73] out and kind of spaced it out and put up a little rock pile, and we didn't get through, and then he got Jim Bartlett to go up the next day and finish it 'cause I had to go and drive team. Mr. Gustafson was working all the time,

(Testimony of Frank C. Whittaker.)

practically, then in Albright's quarry; he was working perhaps a couple of years or three—three or four, something like that. Mr. Albright and Charley Gustafson and I, we talked about Gustafson's claim at different times, about the price and about taking it up. We asked him if he would take it up for \$440.00, that is, clear, or \$640.00, and he was to use \$200.00 of his own money to commute it; Albright said he would rather have it done that way, and then it would look better before the Government that they furnished the money, see? But he would pay *the* back the money afterwards so they get \$440.00 clear out of it. That is what he told him, the most of them, except one or two favorites. Mr. Gustafson was to get \$440.00 clear. I know whom the land was taken up for; it was taken up for Mrs. Albright and Albright. There was an enclosure of a fence that enclosed several other homestead and deserts in the same enclosure, and there was one side of the bench land for many miles was the river on the other side around there was a fence along there for five or six miles to enclose it, a big ranch. There was a house put up, that is all, I believe, and the first house, put it up of old tree tops,—sawlogs taken out of the butts and then used the tops, and they had been there quite a good many years before and they were getting dozy, rotten, and so Albright sent some men up there and done this. The placing of the improvements on the land was paid for out of money made out of the quarry there. Mr. Albright he told us all how he was acting attorney for his wife, and then he would call her in occasionally and suggest to her what would

(Testimony of Frank C. Whittaker.)

be the best to do. I know that Mr. Albright paid for placing the improvements on the land the same as he did for several of the others, because I seen him draw checks at different times, and then he would tell us. [74] Mr. Gustafson was working for Mr. Albright during the life of the entry. He stayed perhaps three or four nights during the first few years on the land, but just before he proved up on it a while took his family up there and stayed in the neighborhood, I should judge, *of* three or four weeks, along there. Just prior to proving up he had resided, that is, established his residence, there and took his family upon the claim, not before that. He was hurt in an accident; he was blowed up there with dynamite caps in the quarry. During the time he was disabled, when he wasn't in the hospital, he was at Mr. Albright's working for him. I had some conversation with Mrs. Albright about the Gustafson entry. Once I remember going up on the bench there and she wanted to know about where different ones took up land for her and Willie—she called her man Willie—and I showed some of the buildings, showed one place or another, and I pointed out one, one place, Charley Gustafson's would be such a place, and we couldn't see the house. Mrs. Albright and Mr. Albright and I talked about the price that was to be paid Gustafson for his land—we talked about it in the house together. And she asked Mr. Albright what was the price we was going to pay him, and he said, "The same as the rest; if he commuted it, it would be \$440.00 clear out of it"; and she said, "All right,"

(Testimony of Frank C. Whittaker.)

willing for him to take it up. There was some trouble between Gustafson and Mr. Albright after the final proof had been made about the price that was to be paid for the land. I hear Mr. Albright and Mrs. Albright talk about it, said Mr. Gustafson he didn't commute it, he *staid*, he let it run the limitation, five years, and then proved it up, either five or six years, that would be five years, little over; I believe the rule is to run as high as seven, inside of that; it might have run a little over five; and she said it was rather a poor piece of land, and said they didn't want to pay him so much as the rest because it wasn't as good as the rest of the land. Mrs. Albright made that statement. During [75] the period of time that I have testified to, my relations with the Albrights were friendly all the time; I was working there for their interests; I lived there a good deal of the time; I stayed in their house, but when I had my family we lived in the house, my family and I. I used to sleep in the Albright house when my family wasn't there, and they was back, I would sleep in Mr. Albright's house. I took my meals in Mr. Albright's house. The other men who were working for Mr. Albright took their meals in Albright's house. Mr. Albright first bought out my pre-emption claim, and then he wanted me to take out a homestead, and he talked to her and she said, "Yes, it would be all right," and then he talked to her and said, "What is the matter with getting several of the men?" and different ones he suggested—I was talked to by Mr. and Mrs. Albright about these various entries because

(Testimony of Frank C. Whittaker.)

I knew, I was in there working for him, and I knew the country better than they did; they would ask me all about the land, where the best piece was they could take up for them, the different ones, so I would tell them everything I knew about it, and we had conference between us in the day times in Mr. Albright's house; I would be consulted about these various business transactions; Mr. Albright took me into his confidence; I look after a good deal of his business there. We would have these conversations in Mr. Albright's house, in the front room, during the evenings, after working hours, after supper. Mrs. Albright and Mr. Albright and myself, us three, would be present. Mrs. Albright would take a little part in the conversation, *he* would do most of the suggesting, then asked me questions and she said it was all right. She was familiar with the general condition there and the general transactions that were taking place; *he* spoke about it to her, that he had to have them taken up and assigned over to her on account that if there was any trouble hereafter, that showed that he had nothing to do with it; he told that to her and me; she said it was all right. When [76] Gustafson made his final proof Albright told me that he paid for it, and Charley Gustafson paid for it, that is, he told me that Albright was to put up the money for it. I know who paid the fees that were paid at the time Jennie Benedict submitted her final proof; Mr. Albright drew a check, I believe; I was there and heard when they were talking about drawing the check. I have made a homestead filing up in that locality and I

(Testimony of Frank C. Whittaker.)

made one desert. Mr. Albright suggested to Mrs. Albright getting me to take up some land, and I told him yes, I told them I would, so I went and filed on land and he gave me the money to file on it. Mine was one of the first ones proved up, I believe, and I ain't sure, but it seems to me I deeded that to Mr. Albright and he said he was going to deed it then to his wife, which I understood that he did afterwards; he told me so. The title was to be all in her name in the end. I was to get \$750.00 and he was to pay all expenses, and then he told me he was doing pretty well by me, giving me so much work and one thing and another, that he would give me \$550.00 clear, and that is all I got out of it. This agreement was made before I had made my filing; before I entered the land. Mr. Albright gave me a check for the filing fee. Mr. Albright paid for having the improvements placed upon the land. Mr. Albright paid the final proof—the fees that I paid at the time I submitted proof. I took up a desert claim for Mr. Albright. My understanding with Mr. Albright with reference to the desert claim was that I was to get \$600.00 out of it clear and he was to pay all the expenses, improvements, and so it came late that fall and he couldn't get anybody to do the plowing and one thing and another, and when it come time to make proof he wanted me to come down, his wife to come down *and* a witness and my wife, and at the same time make my proof for my wife, and when we made proof for my wife it was all right because he done the improvements on it, and [77] when it came to me I says,

(Testimony of Frank C. Whittaker.)

“Mrs. Albright, I can’t do it; Mr. Albright has made no improvements as he agreed to, and I can’t perjure myself; there ain’t a thing done on it.” I never submitted final proof on my desert, and it went back by default. He said nobody would ever find it out, and I just thought he was maybe trying to get me in a trap and so I wouldn’t take my oath to it, when it wasn’t worked on. Of other people who entered land there for Mr. Albright there was Peter Carter and Hermann and Gus Engler and Clara E. Whittaker, Gusta Grote and Abe and Ed Olive two brothers, C. G. Lohmeier, Charley Gustafson and Mr. and Mrs. Albright each took a desert; Tom Herson—I guess I can call them all off if you give me time—and Mrs. Jennie Peterson afterwards took a timber claim; and Lizzie, Albright’s niece, took up a timber claim for him, but she did not work for it; she was just staying there, visiting; Andy Mozard took up land too; *he* is dead now; Gus Antonich, he took up a homestead. Mrs. Grote went down to prove up on a homestead three times and on account of Mr. Boulter appeared there, and then we had orders and so it was advertised to prove up, and I was one of the witnesses, and then we did not prove up on account of Boulter was there, and so after a while Mr. and Mrs. Albright said they would have her take it up as a timber claim, which she did. When people took up the claims and during the life of the entry they worked for Mr. Albright—that is, all but his niece from Missouri worked for Mr. and Mrs. Albright in the quarry. The niece was on a visit. Practically all the time

(Testimony of Frank C. Whittaker.)

these people worked in the quarry when they were supposed to be living on the land. I know that these different people took up the land for Albright because he used to hold conferences, the three of us together, you know, secretly, about the land and Mr. Albright and I would go out and stake it and look it over and he would talk to her and come back and everything was all right, and have them file on it; he would go down with them, pay their expenses and give them wages besides. I know [78] this because I have talked with them; he would sometimes call them up before me and we would talk about it, and he would ask sometimes about the land of me too, because I knew the country better. What I have testified about is what I know myself, what I have seen, and what Mr. and Mrs. Albright and myself talked about. This was the customary price for most of them; one or two favorites were to get \$440.00 when they commuted, and if they commuted and used their own money they would get \$640.00. Mr. Albright said he and Mrs. Albright would get all the land put together for stockraising, grazing and farming. I know good lime rock when I see it, and I worked it up a good many years there for Mr. Albright. I understand gypsum; I have located many thousand acres of it for myself. I had some gypsum, part of what he has now; my brother and I had it and we could not handle it in 1893, at the time of the panic, and I told Mr. Albright that he could have it if he could handle it. I am familiar with the general formation around the Jennie Peterson land; one edge of it is next to the

(Testimony of Frank C. Whittaker.)

creek; lime ledges crop out a little; but part of it good land, all good grazing land practically, and lots of springs on for water. I have seen gypsum float there, but I haven't seen the ledge; I know Mr. Albright set two or three different men up there digging; I know two Swedes and they dug about five holes and they came down one night and said they had struck a body of gypsum, so Albright sent them back to cover it up. I heard Albright talking with his wife and he said that gypsum was worth \$10,000 and that they would keep it quiet and would some day give Mrs. Peterson something out of it. I should judge the Peterson entry is between two and one-half and three miles from the quarry. Comparing the Peterson land with the quarry, the quarry is broken ledges along the creek; there ain't much plow land, and this here, part of it, is hilly, but it is oval so you can plow probably half of it on that one hundred and sixty, and some [79] big patches lay flat practically, and then two or three ledges of lime rock sticking out on the one hundred and sixty, one edge of it. The surface of the land would be more valuable for farming and grazing, but the mineral is down in, would be more valuable or as much valuable as the surface, I should judge, or more. I should call it mineral land because it is on a contact and it crops out toward Kibbey, half way toward Kibbey again, where Kelly used to live, it is on the same contract, and then there is big ledges a little way from it below on other land Albright has, and then he claims to strike it there in them hills, and we seen float there,

(Testimony of Frank C. Whittaker.)

Albright and I, float of gypsum and also marble and lithograph rock. In the ledges there would be first-class lime rock. Practically all the lime rock there, under the surface of that country for about six or seven miles along there, is all good lime rock.

Cross-examination.

(By Mr. STEPHENSON.)

I took up a desert for him and a homestead for him and her. I took up the homestead first. I took up the homestead in about 1900, and about 1901, I think, I filed on the desert. I couldn't say exactly whether I filed on the desert before I made proof on my homestead or not. I said something about him wanting me to swear that there was certain improvements upon that desert and that I wouldn't do it because I didn't want to perjure myself. I knew it was wrong to commit perjury when there was no improvements; *he* agreed to put on all the improvements. I filed on the homestead for myself, I believe. I swore I filed on it for Mr. Albright and Mrs. Albright; they were the ones that got me to take it. I didn't consider that I was perjuring myself when I made my homestead application. I did not consider that I was perjuring myself when I made proof on my homestead. I didn't find out that I was perjuring myself only [80] as they wanted me to take up the land for them I didn't know whether it was perjury or not. They told me to call it my home, take it up for him, and they told me to call it that way. I will be forty-six years the twenty-seventh of June coming. I was friendly

(Testimony of Frank C. Whittaker.)

with the Albrights about that time and for many years afterwards; I was friendly to Mrs. Albright up till last spring and also with Mr. Albright until two years ago this winter we were the best of friends. I didn't fall out with him; he fell out with me. I had not been threatening to sue him for the last two or three years; I haven't gone to pretty near every lawyer in Great Falls to get him to bring suit against Albright for you in the last two years; I haven't made a round of all the law offices in town seeking some attorneys to bring suit. I had Mr. Freeman to write Albright threatening to sue him. I came to your office at one time to seek you to bring suit; I went to three or four lawyers, because he owes me. I have never brought suit. For the last two years I have consulted three or four lawyers to try to get them to bring suit against Albright, and I have got a lawyer now. I did not send for Mr. Bennett and give him the information that started this investigation. Mr. Bennett asked me if I wouldn't go out with him and I went with him. I continued to work for Albright about six or seven years, straight along. I quit about somewhere in the neighborhood of four years ago, I guess—four or five years ago. We was in partners up to three years ago on some mining claims. I was not working at the quarry then. It has been four or five years since I quit working at the quarry. I stayed there part of the time in his house, my family and I. I used to stay there a good deal after my family had left there. The last time that I stayed there

(Testimony of Frank C. Whittaker.)

when I was working there would be four or five years ago. Clara Whittaker, who had a claim for Albright, was my wife at the time. She now lives in British Columbia, I [81] believe. If I remember right, Jennie Peterson went back to Michigan twice. She went back once before she made her homestead filing—she has been back three times. I believe she went back once between the times she filed on her homestead and the time she made proof; I can't tell you what year exactly. I was working for Mr. Albright at the time she came from Michigan—at the time she made her filing. I wasn't in Great Falls the day they made her filing; Mr. Albright came down. I heard some talk that took place between she and Mr. Albright when they came out—up at their place; but she wrote to Michigan. He made the agreement before, you know, writing, and we talked it over, Mr. Albright and Mrs. Albright and myself talked it over, and he said he would write and ask Mrs. Peterson if it was all right for her to come out and *if* keep books for him, and said he would send her ticket and money for expenses, and he would meet her in the Falls and show her what land to file on, and Mrs. Albright said yes, that would be all right. I know he showed me a letter or two that he got from Mrs. Peterson that she would take up land for him; I don't know whether they had another agreement or not; I couldn't say. The letter was that she would take it up for Mr. Albright and Mrs. Albright, both of them. I heard the conversation between

(Testimony of Frank C. Whittaker.)

Albright and Mrs. Albright and myself about taking up the land. I didn't hear any conversation between Mrs. Peterson and Mrs. Albright as to the bargain, but I heard them talk about going up and staying on the land—talked to Mrs. Albright, saying she must go and saddle up the horse and take up some grub; it was the understanding that she was to hold down a homestead for Mrs. Albright. Right personally I don't know as if I have heard any conversation between Mrs. Albright and Charlie Gustafson with reference to their claim; you see, Mr. Albright acted as attorney for them all, practically, for Mrs. Albright, and he would suggest a thing and tell Mrs. Albright, and before me, and we would talk it over and she would tell him yes, it would be all right, go ahead. I transferred my claim to Mr. Albright, I believe. [82] I had my agreement with Mr. and Mrs. Albright; there were the three of us together. Albright talked to her and asked her if it was not a good thing to get different ones to take up land for her, and then it was originally to be everything transferred to Mrs. Albright in the end. The only gypsum I saw right on the Peterson claim was just some pieces of float there, but Mr. Albright had two men digging there and had four or five holes, and they come down one night and fetched some gypsum, and so Mr. Albright and Mrs. Albright talked there together that evening and said they must send them right back to cover it up and not let anyone know they struck gypsum, because they didn't want the Government

(Testimony of Frank C. Whittaker.)

gypsum, because they didn't want the government to know anything about it. They claimed to have struck it on the Peterson claim—the men did, Gus Benson and Andrew Johnson. I saw floats of gypsum, that's all, in the hole. Where they dug out I suppose they struck it and then covered all up the float, and some float left there. I would never have gone up there and uncovered that hole to see whether there was gypsum there, but I located it for gypsum with some other parties, and we understood we could hold the gypsum, and intend to do it this spring; we located it some time ago. I have no interest in getting this patent cancelled; I didn't make any complaint on it. I thought it was cancelled, then I thought I would file right to-day first, because it was classified as mineral land, I understood; I understood the first one who located it as mineral could have it. I have located it for the mineral. I am not looking for the \$10,000.00; I am looking for the mineral. I intend to dig there this spring. I dug enough to make a location. I haven't had time to dig there yet; there's lots of time yet to do that. I couldn't say how long it would have taken to uncover that \$10,000.00 gypsum vein; you see it was freezing weather when I was digging there, done the filing work. About seven others are interested with me in that filing; Peterson is not interested. I just can remember without looking up [83] the papers who are interested. I can't tell without looking up the papers whether I took Gustafson in or not; I have got all the

(Testimony of Frank C. Whittaker.)

names on the paper. I made the filing. I have not acted as a kind of dectective up there for the last two or three years to gather up evidence to get that patent cancelled so that I could make filing up there. I have seen and talked with Mrs. Peterson; she is my niece. She and I have not compared notes and talked over this thing from time to time so that our testimony wouldn't conflict too much. I have not talked to her a good deal about the case. Gustafson and I have spoke about the case once or twice, but we didn't talk much about it. I ain't sure if one of the Gustafsons, either Mr. or Mrs. Gustafson, is in on the gypsum filing, there might be one of them; I made so many locations—I do every year; I use different names all the time, different ones. I do not take them without consulting them; I always consult them. I have filed thousands of *actes* for myself and others. I haven't been a pretty good at land grabbing myself; I haven't got very much of my own; I haven't got any, practically, deed, any of my own, only what I bought from other people. The Peterson claim, the first edge of it, probably a straight line would be a half mile from the railroad; it might be three-quarters. Limestone there would have commercial value if they ever wanted to use it, that's all. There is limestone all along up and down. If limestone is not right next to the railroad they have to build a railroad to it, of course. I could build a railroad to this Peterson land; I would *built* it from the other railroad; come up the gulch, go right through it,

(Testimony of Frank C. Whittaker.)

quarry it out; there is a dry canyon. It is on the east side of Belt Creek; it is on the left-hand side going up. There is no wagon road that one can drive up, but with very little work you could make it that way; there is a horseback trail in there now; there is brush in there so you couldn't drive with a wagon.

By Mr. FORD.—We wish to introduce in evidence the certified [84] copies of the homestead entry of Jennie Benedict, now Jennie Peterson, marked Complainant's Exhibit 1.

[Testimony of Mary Elizabeth Gustafson, for Plaintiff.]

MARY ELIZABETH GUSTAFSON, called on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. FREEMAN.)

My name is Mary Elizabeth Gustafson; I live at Albright, Cascade County, Montana, and am the wife of Charles Gustafson. I know the defendant, William H. Albright, and Villa C. Albright, his wife. I *first* them in October, 1903, at their quarry at Albright, where my husband was working. I have talked with Mrs. Albright about the men working at the quarry; she always spoke of them as "the boys" and she says, "If they hold the homesteads and work in the quarry they could make a little money and get a little headway while they are working up there; after they prove up on the homesteads and we buy it they can accumulate

(Testimony of Mary Elizabeth Gustafson.)

a little money"; she said the same thing to me. I think, almost the first evening I was there. The first evening I was there she said. "I do hope you like it, because Charley holds a homestead for us and if you can stay here until he proves up and sells it you can make quite a little money by that and by the quarry besides." When my husband was in the hospital I went out and took care of the children at Albrights; she wanted to go away. Mr. Albright, speaking of the boys who had worked for him and let them hold land for him, said he wanted *to care* of his boys, and if they hold a homestead for him they could stay in the quarry and work and accumulate a little money and prove up on the land, and he would then buy it from them. The last year we had the homestead, Albright did quite a good deal of improvement.

I know Jennie Peterson; I knew her from the time I came out to Albright; she was bookkeeper at the time I came out there. I know that Mr. Albright said when I was taking care of his children that Jennie Peterson had been in Michigan and that he [85] was expecting her out. She had been visiting her mother and parents; she went there in November and returned in March, and this was just before she came; it was in March he expected her and he said: "We let that girl take up a homestead for us just to help her out by working in the office and holding land there, so it gives her a show to make money in two places." It was common talk with everyone

(Testimony of Charles Gustafson.)

that the homesteads up there were for Mr. and Mrs. Albright.

[Testimony of Charles Gustafson, for Plaintiff.]

CHARLES GUSTAFSON, a witness called for and on behalf of the above-named complainant, testified as follows:

Direct Examination.

(By Mr. FORD.)

My name is Charles Gustafson; I have lived at Albright for fifteen or sixteen years; I know William H. Albright and Villa C. Albright, his wife, and during the past fifteen or sixteen years have been in the employ of Mr. Albright in his quarry. I know the defendant, Jennie Peterson, who was formerly Jennie Benedict and have known her about nineteen years; she was living at Albright keeping books for Mr. Albright at the quarry and attending to the postoffice and stores. I never saw her homestead but I saw the house on it when going to my homestead. She was working for Mr. Albright when she filed on the land. I had a conversation with Mr. Albright and he told me that Jennie Peterson was going out there to take up land for him; that was before she filed upon it; I had this talk in April or May and she filed in July. Mrs. Peterson told me she took up the land for Mr. Albright. That is all I recall of the Jennie Peterson entry.

Cross-examination.

(By Mr. STEPHENSON.)

I don't remember what year Miss Benedict first

(Testimony of Charles Gustafson.)

came to Albright to work. When I first knew her she was living on [86] Frank Whittaker's father's ranch. It was in 1901 that Mr. Albright said that she was coming up there to file on land for him; she was coming from Michigan at that time; she came in the summer of 1901; he did not tell me what land she was going to file on for him. Mrs. Peterson told me she took the land up for Albright; she first told me this in the fall of 1901.

DEFENDANT'S CASE. [87]

[Testimony of William H. Albright, for
Defendants.]

WILLIAM H. ALBRIGHT, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. STEPHENSON.)

My name is William H. Albright. I am one of the defendants in the above-entitled action. I live on a sheep ranch about three miles from Albright. Mrs. Albright and I were formerly the owners of the Albright quarries. I located up there the 17th day of October, 1892. When I was running the Albright quarries I was getting out blast furance flux for the B. and M. Smelter. I employed a considerable number of men from time to time; I started in with two men and sometimes had as high as ninety-two and ninety-three on the pay-roll, I guess a few times a hundred. I knew Charles Gustaf-

(Testimony of William H. Albright.)

son; he worked for me at the quarry as a common laborer first and then I put him on as a driller and powderman afterwards; after he got hurt I put him on as foreman. I couldn't remember what year it was he took up a homestead; it is a long time ago. He never entered into an agreement with me that he was to hold this homestead for my benefit; I never paid no filing fees for no one. I didn't pay his expenses to come down here to Great Falls at the time he came to file upon his homestead. I kept the books myself, and this is the only payroll I had; I guess some others kept it part of the time. Here is Charles Gustafson; the fifteenth and sixteenth he did not work—that is May, 1901; that was the time he came in here to file on his homestead; there was no land office here. The land office was in Helena, I think, but here is where he came in, but the Receiver's Receipt, I guess, shows the twenty-fourth. He wasn't working the twenty-first and twenty-second. You see, wherever, those crosses are he didn't work; might have possibly been those days, but then of course, ten years is a long time, but I think that is the [88] time, this time. He wasn't paid because here is what he was paid, shows right here; he got \$3.00 a day and worked twenty-five days and got \$75.00; here it is. Well, I handed him \$26.15 before; that amounts to \$75.00 altogether; then \$48.85 was the amount due and total amount was \$75.00. This \$26.15 I couldn't remember, you know; he got that in cash, you know. For his pay that month he got it in

(Testimony of William H. Albright.)

two installments. Sometimes a man asks me in the middle of the month to give it to him, and I give it to him, and it comes under the head of amount paid. Here is the total number of days, wages per day, amount paid, amount due, total amount; here it comes all in; he got that in his final check, \$48.85, and drawed \$26.15,—might have been some cash and some other things, overalls and one thing and another, you know, tobacco and stuff. There was no land office here at that time; I guess they made application at Randall and Prior's, I think. I remember Barker and myself coming in with him. I was in Randall and Prior's office a few minutes; I was there to sign my name; had to have a witness, you know, and I didn't read the witness' statement; I was in a hurry, like; I always was them days. Mr. Barker took up a homestead on Pilgrim's Creek, and I was the only one that had ever been up there. Mr. Gustafson was a powderman, and there was a Heinze lawsuit, and I said, "I can't watch you boys," and I gave him and another man that was a licensed powderman from New York, and I gave him a batch to drill and blast while this lawsuit was going on; I told him I couldn't watch him, and look out for themselves, and told them not to go within one hundred feet of fire, sat by it, opened a box of caps and a spark flew into it and hurt his anatomy; he drawed wages right along; part of his finger and part of his thumb and one or two other fingers were blown off. He was laid up a considerable time; he was in the hospital; the time-book

(Testimony of William H. Albright.)

shows how long he was in the hospital. He was injured while working for me; I built a house for him there [89] at the quarry, and he paid me rent for a little while for a part of the lumber and then he didn't pay me any more rent, and afterwards he tried to claim the place by the statutes of limitation. I built him a house at the quarry for him and his family to live in and they lived in it seven or eight years. I had a man breaking horses on the ranch—his name was John Lacey—and he asked me one day if Lacey could break a little land for him, and I said all right. I don't believe I charged for that; that was after he was injured. When he came to prove up I didn't say one thing; I gave him a quarter more than I did any other man on the job and helped him out that way for the same kind of work. I paid part of his hospital bill; I gave him checks several times. I didn't have him on the pay-roll, but I gave him a check for when he was hurt of some of my money. I didn't pay any part of the final proof expenses. I never seen his cabin until the summer of 1911. I didn't hire anybody to build it for him; there is a rancher by the name of Martin Hassett, who used to carry his child around a good deal, and Martin asked for work, and I said, "You can stay on my ranch until I get ready for you," and I put his name on my pay-roll. I didn't order him to do any work for Gustafson; if he did, it was on his own responsibility.

I never told anybody that I would pay them the same for their claims as I paid the rest. We have a

(Testimony of William H. Albright.)

considerable body of land—people come to us because they thought we had money, when they wanted to sell. I have scripped land up in that country and bought a lot from the N. P. I have acquired land from people who had not worked for me. A number of people who worked for me took up homesteads which I have not acquired. It cost me \$3.50, \$4.00 and \$4.25 per acre, along there, to buy scrip. The price of the scrip was really what gave the price of that land. In last summer, 1911, I bought 1250 acres from the N. P. at from \$3.75 to \$5.00 per acre in that vicinity joining the Gustafson and Jennie Peterson ranch. A whole lot of people who came to work for us in the early days, in the nineties, took up homesteads. It was not unusual for a man to come out and get work in my quarry and then go out to take a homestead. Jennie Benedict worked for me prior to her trip to Michigan; she started to work in 1895. I didn't send her any ticket to come back from Michigan. I did not meet her in Great Falls and take her to Prior's office to acquire a homestead. She was working there and said she wanted [90] to get married and thought she could get a fellow better if she had a homestead, so I got on the train and went down on it and got off at the corner common to sections 34, 35, 26, and 27 and walked down a quarter of a mile up the hill and part way along the line between 35 and 36 until I got to the common corner of sections 35, 36, 25 and 26 and then *a* stepped back 440 steps about a quarter of a mile and made a point there, and we were on every forty; she told me

(Testimony of William H. Albright.)

that she had to be on every forty; I had three Government land laws in the house and she read them. We was on every forty acres and then we came back and irrigated some trees. We had no agreement that I was to get her homestead when she proved, nor that I was to buy it. I probably went to Great Falls with her when she made her filing; no doubt I did, but I didn't pay the filing fee, or the expense of building her cabin. G. W. Hermann built it for her. My time-book shows that Hermann laid off from the sixth to the twenty-seventh; it took him only about three or four days to build her cabin, and the balance he was on his ranch. My book shows I did not pay Hermann for building the cabin. I did not pay any expense connected with the final proof, improvements, plowing or cultivating her land. Mr. Everett put in a crop one year; I told him to see Miss Benedict and she could put in a crop there. I never paid any of the expense. I sold my quarries February 20, 1911. The newspapers said I got \$100,000 for them. I didn't give possession until May 1st, and we ran that long according to agreement. The ninth of April came on Saturday. My bookkeeper, Mr. Lohmier, went to Great Falls and came up with Mr. Hall, the present manager, to take possession. Just about half an hour before the train came, Jennie Peterson went around the kitchen in the back way and came to the hall, and says: "Have you got anybody hid here?" I said, "What do I want to hide anybody for?" And then she said that if I didn't give her a thousand dollars, that she, Frank Whittaker, and

(Testimony of William H. Albright.)

[91] Charley Gustafson would swear me to the pen by a preponderance of the evidence; when she got through she was breathing awful hard and looked as if it was an awful nervous strain on her, because she was all out of breath and hissed at me like a snake when she went through her stunt. Frank Whittaker is her uncle; he has been after me the last three years, writing all kinds of letters; he never came to see me and said I owed him; he has been there and stayed all night with me and he has told other people that he was going to kill me. Whittaker never held any claim down for me. I had no agreement with him about holding down a homestead and I have never had any such agreement with any other person. I have never paid or agreed to pay any expenses of holding down or proving up on a claim with anyone. I have bought a very small percentage of the claims taken up around me. I took them in Mrs. Albright's name; she had been in Oregon when I bought some of the claims; she was in Great Falls when I bought the Jennie Peterson claim. I signed the note to Mrs. Peterson for her homestead because Mrs. Albright didn't like Mrs. Peterson and wouldn't sign the note. I paid Mrs. Peterson \$800. \$150 cash and \$150 check; Mrs. Albright reimbursed me for this money. We kept our money separate but I managed all the business.

Mrs. Peterson got some provisions and stuff and we charged it up against her wages. This book shows that she was at work, here, and here she wasn't, she was on the ranch. That is my writing;

(Testimony of William H. Albright.)

that is her writing, and then at the quarry and then at the ranch; she done all this work. When she was at the quarry she kept the books and when she was at the ranch I kept the books. Here she got \$8.75, that is for grub; she probably got some stuff out of the store; she didn't get any cash. In May, 1902, she got a final check for \$22.75; her wages were \$1 a day. She got \$10.25 and this check for \$17.25 was for grub and other stuff she got for her [92] ranch. She expected a raise of wages and I raised her to \$40 a month; this month she didn't get anything; it was all for lumber or something like that; here is \$11.60 she got and a check for \$28.40. The \$11.60 was in trade; in July, 1904, she got \$4 in trade and \$36.00 check. Here is where she paid \$110 on the fence. I prospected her ranch and found no gypsum on it. The Frank Whittaker prospect is on scrippped land. Benson and another man told me they had found gypsum but that was on Section 24, not on the Jennie Peterson place at all. They never made any holes on her place; that gypsum ledge is above her place. I have had considerable trouble with Frank Whittaker; he tried to assault me with a gun in 1910.

Cross-examination.

(By Mr. FORD.)

During the time I have testified about I have been running the quarries, and a little farming; I had men who were not employed in the quarry; they worked on the ranch once and awhile. The time-book was kept for all the men to show when they worked and

(Testimony of William H. Albright.)

to show what the profits were of the quarry and whether it was a business proposition. I kept some of the time of the men who worked on the ranch, I didn't keep it all here. This book is practically for the men at the quarry only. If some of the men whose names appear here worked part of the time, such time on the ranch might not appear in this book. Mr. Gustafson never got a cent except what is in that book. He never was employed by me at the ranch. Mr. Whittaker worked at the ranch once and his name appears here; he only worked at prospects for me, for several years; I grubstaked him; he put in time and got paid for it on the prospects; the time he was paid for work on the prospects does not appear here. The men who worked on the ranch are not entered here; sometimes I worked men on the ranch from the quarry and they appear here. [93]

Jennie Peterson and I marked off her claim a while before she filed—about a week before. I says: "Whenever it is convenient and I have some business in town I will go with you." All of the business in the quarry and at the ranch was carried on in Mrs. Albright's name. She leased the land to the B. & M. Smelter and received the royalty and I had the contract to get out the rock in my own name. She got three cents a ton royalty and I received forty and fifty cents a ton getting it out. My wife and I never kept any books, just memorandum slips, and we would settle up every little while; I owe her money right now; she got more money out of the royalties than I did from the contract for getting the rock out.

(Testimony of William H. Albright.)

Jennie Benedict, Jennie Peterson, kept a memorandum of my account with her showing what she took to her ranch. We settled up; she wanted to go away; I paid her off and did not have any more work for her to do; we were going to fence the school land and had gotten out some posts and she said she wanted some fencing done and asked how much it would be. We figured it up and it amounted to \$110. So I said, "All right, you pay me and I will get your fencing and put it up." Part of the fence we put up was new and part of it old; just repaired the old; the claim had been taken up five or six times and had been cancelled before. I constructed the fence on the Jennie Peterson claim and she paid me for it. I didn't build her cabin; a fellow by the name of Hermann did that, in December. Hermann said: "I want to build Jennie's house." He was working for me then. My book shows that he was not employed at the quarry from December 6 to the 27th in 1901. He never drew a dollar unless he was at the quarry. He was a carpenter. He never did any work at my ranch. I didn't send him out to the Jennie Peterson homestead to build the cabin for her. He said, "I want to lay off. I don't feel very good." He was gone that long and didn't get any pay while [94] he was gone.

Jennie Peterson had been working for us ever since 1895, and I don't remember that she had been in Michigan just before she made her filing—that is a long time ago. I know she took several trips there; I never wrote to her while she was in

(Testimony of William H. Albright.)

Michigan on any of those trips. I never wrote her or anybody because it never was satisfactory. She is mistaken if she says that she had any correspondence with me. I never sent her any ticket to come back from Michigan on; she is lying if she said I did. She was out there a couple of weeks or so when she made the entry. This morning I testified what we done. Do you want me to repeat it? I came to Great Falls with her when she made her homestead entry—I often had some business in Great Falls. She certainly is mistaken if she testified that she came from Michigan to Great Falls directly and met me here for the purpose of making her homestead entry—she knows better. I didn't pay her filing fees. I didn't encourage anybody to take up homesteads or make any inducements to anyone. Supposing you had a horse to sell for \$150 and I can buy it from you, do you think I would have Frank Whittaker buy it from you and give him \$150 or buy it direct from you? If I wanted all that land I could scrip it. I didn't have to steal it or go into cohorts with somebody when I could scrip it. No one was offered the inducement of getting anything for his homestead after final proof. There was no such bargain, contract or thought of that kind in my head at all. If a man wanted to work he could; if he didn't he got fired. Lots of persons living on homesteads worked for me and lots of them didn't. I purchased some of them, not more than one in ten. I didn't think anything of buying their homesteads until they came to me with their patents. I would know whether they had been work-

(Testimony of William H. Albright.)

ing for me; I didn't make any inquiry about whether they lived on their claims or not; I didn't think there was any chance; they had a patent; I thought that was final—thought nothing about it at all.

Before Jennie Peterson made her homestead filing, I never had any talk with her about it; she said she wanted a home of her own. I didn't have an agreement to buy it from her. I didn't tell her that I would give her more than the rest if [95] she didn't commute and proved up at the end of 5 years. I always thought she made a five year proof until I read that testimony. I didn't tell her I would give her \$640 if she commuted. There was nothing said about the rest at all, no reference to anything except she wanted to sell that homestead. She bought the lumber for the cabin and charged it up against herself on the books. It is just showed in the time-book. She never got any cash, in the final check she paid for groceries and other things. My time-book does not show that but I know she got no check except the final one. Every month she settled up, she said I got so much for lumber and so much for this and so much for that, probably a garden hoe, something like that; we had those things there. During the time she was working for me she had her trunk and all furniture she had on her homestead; she slept on her homestead when she was there. Her homestead was about two and a half miles from the quarry; she had a horse. The time-book shows that sometimes she would stay on the entry a long while; she would be on the claim so many days, then back, and so on. I

(Testimony of William H. Albright.)

went by the claim several times and she was living on her homestead and she told us she was going to her homestead. I never sent any provisions up there for her; she had a horse and told me that she bought her bread, eggs, and butter over at Mrs. Rice's. She didn't have a patent for the land when I bought it. She said her *mortgage* had a \$300 mortgage on her farm and she wanted \$300 to pay off her mother's mortgage. I didn't come to Great Falls when she made her final proof. I think Mrs. Albright was in town here when I bought the Peterson claim. I told Mrs. Peterson I was purchasing the land for Mrs. Albright. I paid \$150 by check and \$150 in cash. I had nothing to do with her final proof. The money was paid August 28th. Although my wife was in town, I signed the check and the note, because Mrs. Albright wasn't on very good terms with Mrs. Peterson and would not sign them. [96]

I told Mrs. Albright I was going to buy the land in her name. I don't remember all that Mrs. Peterson said this morning. It is not true that \$200 of the \$300 I gave Mrs. Peterson was for the final proof fees. I paid it August 28th; I have no book showing that; I don't know who my bookkeeper was then. I also purchased a timber and stone claim from Mrs. Peterson; I gave her \$640 for it; there were 160 acres in it. I don't know where she got the money to *making* her filing with. I never had any contract with her before she made her filing. I didn't pay the filing fees or the purchase price of the land, or give her the money for it either.

(Testimony of William H. Albright.)

Mr. Lavelle had a desert claim; he wanted to go to Alaska; he used to go and see her once and a while, so he signed the desert over to her; I scripped some land she had filed on and she filed on this desert. I think Mrs. Peterson made the deal with Lavelle for the relinquishment. I had part to do with it as I paid Lavelle \$80 for the school land and some fencing. I didn't pay anything for the relinquishment to Mrs. Peterson and I don't think she paid anything for it. I never saw Complainant's Exhibit 3. I didn't get Lavelle to execute that for Mrs. Peterson; she got that herself; her and Lavelle fixed it up; I wanted the school land; there was a spring on it and I wanted to carry the water 14,000 feet to some other land; I paid \$80 on that school land that he owed the State and got the land and paid him for the fencing; Mrs. Peterson got 80 acres of this land and I got 40 of Mrs. Peterson's; she got better land; I got a spring and she got two springs in the transaction.

My book does not show that the \$110 was paid by Mrs. Peterson for the fencing on her land; she figured out how much that would cost; she wanted the fence next spring; I was to get the material and put up the fence; I let it go on the wages. I remember that without any memorandum. I gave her a contract and [97] she gave me a contract back, when the fence was up the next year. I kept \$110 out on that fence, I didn't pay her; that is all the memorandum I have on that.

Mrs. Peterson tried to get money from me, blood

(Testimony of William H. Albright.)

money, on April 29, 1911, she came to see me; the next time I had a conversation with her was coming up from Northrup last fall. When this suit was filed, I asked her when she swore to the truth—the last time or the first; I didn't tell her what I wanted her to testify to or that I would make her a present if she would; I told her she was a perjurer and blackmailer. At the time I spoke to her about when the suit was filed, I believe I had read the testimony—the complaint. I hadn't seen any affidavit she had made then. She was going to hold me up for \$1,000; I knew she was up to something, deviltry. I knew if she hadn't made any statements no suit would have been brought.

Frank Whittaker used to go up to work on prospects for me and come back and say he had done so much and I would pay him; when I went to look he had never done anything; I never knew him to work in my life. He wasn't around my place very much; he worked a couple of months in the quarry; his wife lived right above us. When he was prospecting for me he didn't sleep in my house. We have never been good friends; he had some prospects; I grubstaked him and finally bought him out. Once I gave him a contract to cut some brush. I never talked freely to him; I never could stand him at all; he knew about the mountains up there. Mrs. Albright and I never talked to him freely. I never told him one thing, because no one took up land for me. He was not familiar with my business; never kept books for me; he is pretty crooked—doggone crooked. He drew a

(Testimony of William H. Albright.)

gun on me April 27, 1910. He didn't tell me why he drew the gun; was behind a door in the library; Miss Neihart was there keeping books for me, but was away; I came down in *my* [98] *as* I went to the table to get breakfast; he jumped from behind the door and stuck the gun in my face; he said, "Throw up your hands!" I flew upstairs; I didn't have a gun. He wrote a number of letters and told everybody that I owed him \$1500, but never yet told me that I owed him any money. He has never been in my house since. About three years ago Mr. Randall and I bought out his interests in the copper claims for \$2800; that was in March and in December he wrote me and says the money for the claims is now due. He took up a homestead and after he proved up I bought it from him. I bought his wife's desert claim after she had a patent. I had no contract of purchase with her; I didn't pay any expenses on the claims; when any men working for me got some stuff or clothing I put it in the day-book; I haven't got the day-book and don't know where it is. In the absence of any contract I never thought of buying Jennie Peterson's ranch; when I furnished anyone any lumber. etc., it would go into the day-book. If Jennie Peterson got any lumber it would show in the day-book. There would often be many small transactions with my wife but I kept them all on slips of paper; they are lost or thrown away. I haven't got those slips or my cancelled checks any more. We looked for them but only found the check I gave Mr. Stephenson.

I bought the Jennie Peterson homestead and paid

(Testimony of William H. Albright.)

for it partly by check; that check is dated August 29th, and final proof of that claim was submitted on August 5th.

Peter Carter had some dealings with me; he worked there; he took up a homestead; my wife bought it; she paid \$640 or \$700 for it; assumed a mortgage for \$350 on it; we didn't put the improvements on it; Carter fired a rock at me and I never gave him any work afterwards; I always try to be friendly with everyone. When he was here as a witness he and I were together; he asked me to loan him some money; I don't think we [99] are very good friends; I don't think anything of him in a business way. I don't think his testimony was as fair as to me as it was to the Government, because he said things that wasn't so. I never put improvements on his ranch or paid his expenses on his claim. I don't know how much time he lived on his claim, as I didn't pay much attention to it. I didn't care whether he had lived there or not. I didn't think I would ever purchase the land until they asked me to. I thought he had testified and proved up and that was all that was necessary. I didn't make any inquiries. Whittaker bought lots of stuff and charged it to me without my authority and I had to pay the bills. We were in prospecting business together—I just grubstaked him about 4 or 5 years.

Redirect Examination.

(By Mr. STEPHENSON.)

I never paid any of the expenses of the Gusta Grote claim; she never proved up.

(Testimony of William H. Albright.)

Recross-examination.

(By Mr. FORD.)

I acquired the Pete Carter and Hermann homesteads after patents were issued; also Gus Engler's, Clara Whittaker's, Ab. Oliver's, G. T. Lohmire's and my niece's timber claim.

[Testimony of Villa C. Albright, for Defendants.]

VILLA C. ALBRIGHT, being duly sworn as a witness on behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. STEPHENSON.)

My name is Villa C. Albright. I am the wife of William H. Albright and am one of the defendants in this action. I never had any conversation with Jennie Peterson about her holding a homestead for Mr. Albright or myself. I don't think there was any agreement existing between he and Mr. Albright that she was holding the homestead for him. We never had any conversations [100] with Jennie Peterson or anyone else in which we spoke of her homestead being her property or the property of Mr. Albright's. She and I weren't on very good terms. Frank Whittaker and Mr. Albright were not partners; Mr. Albright's chief occupation was looking after the quarry. Mr. Whittaker did some prospecting and Mr. Albright would grubstake him. Whittaker would come down from the mountains once in a while, probably two days, and stay at the house; he worked at the quarry a short time once. He and his

(Testimony of Villa C. Albright.)

wife lived about a half or three-quarters of a mile from our house. I never had any conversations in the presence of Mr. Whittaker in which I admitted that any people were holding down homesteads for us. I know of no agreement with Mr. Whittaker that he was holding his claim for us. I lived at the quarry nearly all the time, with the exception of the last six years. I didn't pay any attention to who had homesteads and were working for us at the same time. We had quite a lot of men working in the quarry. The lands were purchased in my name because I got royalties from the lime rock and that money of mine was used to purchase land with. I don't remember giving Mr. Albright a check to pay the Peterson note with. I allowed Mr. Albright to handle my moneys as he saw fit.

Cross-examination.

(By Mr. FORD.)

Jennie Benedict was working for us people; she stayed with us when she worked; I don't remember when she left our employ. She made our place her headquarters; I wasn't very friendly with her. She lived in our house. I don't remember when Mr. Albright bought her land; Mr. Albright asked me to sign a note to her and I refused. I never talked with her about her homestead. She lived with us several times; she never said what she was going to do with her homestead.

Frank Whittaker prospected and Mr. Albright grubstaked him; they were not partners; Whittaker slept and ate at our house. We never talked about

(Testimony of Villa C. Albright.)

land while he was there. We were all on [101] very good terms. He would come down with specimens and stay there; he never forced himself upon us. I don't remember what Mr. Whittaker and Mr. Albright would talk about; I don't remember anything being said about any men filing on homesteads. I don't know who placed the improvements on the Jennie Peterson land. Mr. Albright had power to sign checks and act for me in any business that might come up; he signed my name to checks; sometimes I would sign my name. Mr. Albright had the stone quarries when we were married and he deeded them to me; I don't know why he did it; he never told me he did it to protect himself against damage suits. He and I kept little memorandums of our business transactions. The royalties were paid to me and I would deposit them in the bank. Mr. Albright has little property in his name now; I don't know how much. There is lot of property in my name; *it mostly* all in my name. I didn't sign the Jennie Peterson note or check. I signed the check to Mr. Peterson for the note. The first check to Miss Benedict was not signed by me. I don't know that Mr. Albright and I ever had a settlement. I knew nothing of the transaction until he asked me to sign the note; I wouldn't sign the note because I didn't like Miss Benedict.

Redirect Examination.

(By Mr. STEPHENSON.)

I never gave Mr. Albright a written power of at-

(Testimony of Villa C. Albright.)

torney. Mr. Albright *didn't my* checks to draw out my royalty—he didn't sign my checks at all.

Recross-examination.

(By Mr. FORD.)

Mr. Albright didn't sign my name to checks in business transactions; we maintained separate bank accounts. I don't know how much money Mr. Albright owes me; I get royalties from the stone quarries every month; Mr. Albright hasn't used any of that money; I don't know when I gave money the last time. [102] I never had any conversation with Miss Benedict with regard to the ranch. My recollection is very good with reference to those transactions. I don't know whether Mr. Albright had any agreement with Jennie Benedict.

**[Testimony of William H. Albright, for Defendants
(Recalled).]**

WILLIAM H. ALBRIGHT, *recalled*, a witness for the defendant having been recalled, testified as follows:

Direct Examination.

(By Mr. STEPHENSON.)

Mrs. Albright got her royalty and it was kept in a separate bank-book—we had separate bank accounts. The royalty was paid to Mrs. Albright direct by checks made in her name. The checks were deposited to her credit in the bank. The expenses of the quarry were paid by my checks. If I ever got any monies from Mrs. Albright, she drew a check and gave it to me.

(Testimony of William H. Albright.)

Cross-examination.

(By Mr. FORD.)

No account was ever kept—she would give me money some time and I would deposit it in my bank. She really made money and I sometimes ran behind. I transferred the quarry to her because I was getting to be an old man, and if an accident happened we would have lost everything we had. We carried employers' liability insurance to protect the quarry and they paid the damages, and I gave a check besides as a present sometimes. When I married my wife she had no property except fifty dollars. the property was put in her name for protection; she leased it to the B. & M. Smelter; I closed the transaction without consulting her; some business I asked her advice about, but not very often.

[Testimony of O. C. Mortson, for Defendants.]

O. C. MORTSON, sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. STEPHENSON.)

I lived in Montana forty years; I am a surveyor and [103] a mining engineer. I know the Jennie Peterson homestead and have investigated it to see whether there was gypsum upon it. I claim there is no gypsum on that land at all, because of the formation which is visible on the land. The nearest approach of workable gypsum is a little over half a mile east from the claim higher up. I know where Frank Whittaker made a location; I surveyed

(Testimony of O. C. Mortson.)

the location and found it was 200 feet east of the Jennie Peterson homestead. Here are specimens of rock from Whittaker's location. They are partly iron, one-fourth lime and 66.6 manganese, and is no commercial value.

Cross-examination.

(By Mr. FORD.)

I have traced that gypsum formation all the way from Kibby to Smith River and that formation of gypsum does not come near the Jennie Peterson ground. The nonmineral affidavit Jennie Peterson swore to when she proved up was exactly correct. There is only a very poor quality of lime rock on her claim. The nearest gypsum to the Jennie Peterson entry is half a mile away. [104]

[Testimony of Grace Mitchell, for Defendants.]

GRACE MITCHELL, being sworn as a witness in behalf of defendants, testified as follows:

Direct Examination.

(By Mr. STEPHENSON.)

I worked for Mr. Albright at the quarries three different times. I know Mr. Gustafson and his wife. Mr. Gustafson come into Mr. Albright's office the last of July, 1910 for his money. He got his check and said that he wanted \$1,000 or he would swear Mr. Albright into the pen. Mr. Albright said he wouldn't give him anything. They had quite a few words. That was the substance of their conversation. Mrs. Gustafson came in the next morning and she said about the same thing. She said

(Testimony of Grace Mitchell.)

she would just as soon her husband went to the pen for 6 months *and* get him in for seven years. She wanted a \$1,000. She didn't say what it was for.

Cross-examination.

(By Mr. FORD.)

I had heard that Mr. Gustafson had been hurt in the stone quarry. I had heard that he received some insurance money for the loss of his hand. I didn't hear how much. I couldn't say for sure that I heard that Mr. Albright paid him something. I never heard that Gustafson and his wife claimed that Mr. Albright had promised him a \$1,000. Mr. Gustafson might have been in the office twenty minutes. No one else was present. Gustafson didn't say what he was going to send Mr. Albright to the penitentiary for. Mr. and Mrs. Gustafson didn't hesitate to ask Albright for the money in my presence—they talked out loud. [105]

That at the end of the transcript of the testimony taken in said cause, of which the foregoing is a narrative of all portions that relate in any manner to the homestead entry of Jennie Peterson, the Special Examiner, Dudley Crowther, duly affixed his certificate, as required by law, and rules of court.

WHEREFORE, complainant prays that the above and foregoing narrative of the testimony, taken in said cause, be settled, approved and allowed by the above-entitled court as a true, full and complete statement of the evidence relative and material to the issues in the above-entitled cause for use on the

appeal taken to the Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,
United States Attorney, Solicitor for Complainant.

Service of the foregoing proposed statement of the evidence and receipt of a copy thereof this 17 day of February, 1914, is hereby admitted and acknowledged.

COOPER & STEPHENSON,
Solicitors for Defendants, W. H. Albright and Villa C. Albright. [106]

[Stipulation Re Statement of Evidence on Appeal.]

It is hereby stipulated and agreed by and between the parties of the above-entitled action that the foregoing statement of evidence is a true, correct and complete narrative of the testimony taken at the hearing of said cause and is sufficient for use on the appeal taken herein to the Circuit Court of Appeals for the Ninth Circuit, and that it may be settled and allowed by the Court.

This the 2d day of March, A. D. 1914.

B. K. WHEELER,
United States Attorney, District of Montana, Solicitor for Complainant.

COOPER & STEPHENSON,
Solicitors for the Defendants William H. Albright and Villa C. Albright.

[Certificate of Bourquin, D. J., Re Statement of Evidence on Appeal, etc.]

I, the undersigned, Judge of the District Court of the United States for the District of Montana, here-

by certify that the foregoing statement of evidence is a true, complete and properly prepared narrative of all the evidence adduced at the hearing in the above-entitled action that is essential to the decision of the questions presented by the appeal taken herein, and I do further certify that the same has been duly served and filed as required by the rules of the court.

Dated this 2d day of March, A. D. 1914.

GEO. M. BOURQUIN,

Judge.

[Indorsed]: Title of Court and Cause. Statement of the Evidence. Filed March 2, 1914. Geo W. Sproule, Clerk. [107] _____

That on Feb. 17, 1914, Petition for Appeal and Order Allowing Same were duly filed and entered herein, in the words and figures following, to wit:

[Petition for and Order Allowing Appeal.]

In the District Court of the United States, District of Montana.

IN EQUITY—No. 1091.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants.

APPEAL AND ALLOWANCE.

The above-named complainant, the United States

of America, conceiving itself to be aggrieved by the decree entered herein on the 14th day of January, A. D. 1914, in the above-entitled proceedings, does hereby appeal from said decree to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the records and proceedings and papers upon which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,

Solicitor for Complainant. [108]

The foregoing petition is hereby granted and an appeal is allowed.

Dated this 17th day of February, 1914.

GEO. M. BOURQUIN,

Judge of said District Court.

[Indorsed]: Title of Court and Cause. Appeal and Allowance. Filed and Entered Feb. 17, 1914. Geo. W. Sproule, Clerk. [109]

That on Feb. 17, 1914, an Assignment of Errors was duly filed herein, in the words and figures following, to wit:

*In the District Court of the United States, District
of Montana.*

IN EQUITY—No. 1091.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENE-
DICT), WILLIAM H. ALBRIGHT and VILLA
C. ALBRIGHT,

Defendants.

Assignment of Errors.

The complainant in this action, in connection with its petition for an appeal herein, hereby makes the following assignment of errors, which it avers occurred in this cause:

1. The Court erred in finding the evidence taken in said cause, at the hearing thereof, was insufficient to sustain the allegations of the bill of complaint herein.

2. The Court erred in ordering a decree herein in favor of the defendants and against the complainant, dismissing complainant's bill of complaint.

3. The court erred in entering a decree herein in favor of the defendants and against the complainant, dismissing complainant's bill of complaint.

WHEREFORE, the said *complaint*, the United States of America, prays that the said decree of the said District Court of the United States for the Dis-

trict of Montana, rendered and entered in the above-entitled cause, be reversed.

B. K. WHEELER,

United States Attorney, District of Montana, Solicitor for Complainant.

[Indorsed]: Title of Court and Cause. Assignment of Errors. Filed Feb. 17, 1914. Geo. W. and figures following, to wit: [111]

That on Feb. 17, 1914, a Citation was duly issued herein, which is hereto annexed and is in the words and figures, to wit: [111]

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA.

Complainant and Appellant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants and Appellees.

Citation on Appeal (Original).

United States of America,—ss.

To William H. Albright and Villa C. Albright, Defendants and Appellees, and Messrs. Cooper and Stephenson, Their Attorneys and Solicitors, and Jennie Peterson, Defendant and Appellee,
Greeting:

You, and each of you, are hereby cited and admonished to be and appear before the United States Cir-

cuit Court of Appeals, for the Ninth Circuit, at the city of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, for the District of Montana, wherein the United States of America is appellant, and Jennie Peterson, William H. Albright and Villa C. Albright are the appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and reversed and speedy justice should not be done to the parties on their behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court, District of Montana, this 17th day of February, 1914.

GEO. M. BOURQUIN,

Judge of the District Court of the United States, for the District of Montana. [112]

Service of the within citation and receipt of a copy thereof this 17 day of Feby., 1914, is hereby admitted.

COOPER & STEPHENSON,

Solicitors for Defendants W. H. Albright and Villa C. Albright.

[Endorsed]: Original. No. 1091. United States District Court, District of Montana. United States of America, Complainant, vs. Jennie Peterson et al., Defendants. Citation. Filed and Entered Feb. 19, 1914. Geo. W. Sproule, Clerk. No. 940. [113]

That on Feb. 19, 1914, an acknowledgment of service and waiver by defendant Jennie Peterson was filed herein, in the words and figures following, to wit:

**[Acknowledgment of Jennie B. Peterson of Service
of Proposed Statement of Evidence, etc.]**

*In the District Court of the United States, District
of Montana.*

IN EQUITY—No. 1091.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENE-
DICT), WILLIAM H. ALBRIGHT and
VILLA C. ALBRIGHT,

Defendants.

Service of the notice of settlement of the proposed statement of evidence herein and citation on appeal, in the appeal taken from the decree of the above-entitled court to the Circuit Court of Appeals for the Ninth Circuit, which decree was made and entered herein on the 14th day of January, 1914, and receipt of a copy of each and all thereof this 18th day of February, 1914, is hereby admitted and acknowledged.

Service of any and all other and further papers in relation to said appeal is hereby expressly waived and I hereby consent to any and all other and further steps in said appeal being taken without any notice of any kind to me.

Dated this 18th day of February, 1914.

JENNIE B. PETERSON,

One of the Above-named Defendants Appearing in
Person.

[Indorsed]: Title of Court and Cause. Acknowledgment of Service. Filed Feb. 19, 1914. Geo. W. Sproule, Clerk. [114]

Thereafter on Feb. 17, 1914, a Stipulation as to the exhibits was filed herein as follows, to wit:

In the District Court of the United States, District of Montana.

IN EQUITY—No. 1091.

UNITED STATES OF AMERICA,

Complainant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants.

Stipulation [Re Original Exhibits, etc.].

It is hereby stipulated and agreed by and between the parties to the above-entitled action that any of the original exhibits introduced in evidence on the taking of testimony herein and constituting part of the testimony herein, need not be included in the narrative statement of the testimony prepared for use on the appeal herein, but said originals may be properly certified and transmitted by the Clerk of the above-entitled court to the Circuit Court of Appeals for the Ninth Circuit for use on said appeal herein,

at the request of either party hereto.

Dated February 17th, 1914.

B. K. WHEELER,

Solicitors for Complainant.

COOPER & STEPHENSON,

Solicitors for Defendants.

[Indorsed]: Title of Court and Cause. Stipulation. Filed Feb. 17, 1914. Geo. W. Sproule, Clerk.
[115]

Thereafter, on March 6, 1914, an order as to exhibits was made and entered herein, as follows, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant and Appellant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and
VILLA C. ALBRIGHT,

Defendants and Appellees.

Order [Directing Transmission of Original Exhibits to Appellate Court, etc.].

Upon stipulation of counsel for the respective parties to the above-entitled cause, and upon good cause shown, the presiding Judge of this court, being of the opinion that it is necessary and proper that the original exhibits numbered one and three of complainant, and the original exhibits numbered one, two and three of the above-named defendants, introduced upon the hearing of the above-entitled cause, should be inspected by the Circuit Court of

Appeals in the determination of the appeal herein and should be used upon the appeal as evidence in this cause; and it being further made to appear that owing to the size and nature of said exhibits it is impracticable, if not impossible, to make and insert copies of the same into the record on appeal herein;

Now, therefore, upon motion of counsel, it is hereby ordered that the Clerk of this court certify up under his hand and the seal of this Court, and forward to the Clerk of the Circuit Court of Appeals for this circuit, the above-named exhibits introduced at the hearing in the above-entitled cause, and that said exhibits be forwarded to the said Clerk of said Circuit Court of Appeals at the city of San Francisco, in the State of California, by express or parcel post, said exhibits to be retained in the custody of the said Circuit Court of Appeals until the final disposition of the said appeal herein; and that upon [116] the final disposition of said appeal the Clerk of said Circuit Court of Appeals shall return the same to the clerk of this court in the same manner as received by him.

Dated this 6th day of March, A. D. 1914.

GEO. M. BOURQUIN,
Judge.

[Indorsed]: Title of Court and Cause. Order. Filed and Entered March 6th, 1914. Geo. W. Sproule, Clerk. [117]

That on March 6, 1914, a praecipe for transcript on appeal was duly filed herein, in the words and figures following, to wit: [118]

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Complainant and Appellant,

vs.

JENNIE PETERSON (Formerly JENNIE BENE-
DICT), WILLIAM H. ALBRIGHT and
VILLA C. ALBRIGHT,

Defendants and Appellees.

Praeipie [for Transcript of Record].

To Messrs. Cooper and Stephenson, Solicitors for
William H. Albright and Villa C. Albright, Two
of the Above-named Defendants and Appellees:

The undersigned, solicitor for complainant and
appellant herein, hereby files and serves upon you its
praeipie in conformity with the rules of court indi-
cating the portions of the record to be incorporated
into the transcript on the appeal herein, and which
said portions of said record you are hereby notified
the said complainant and appellant will incorporate
and include in the record on appeal.

Said portions are as follows, to wit:

1. The judgment-roll, or final record in said cause.
2. Order appointing Dudley Crowther special ex-
aminer to take the testimony in said cause and report
the same to this court.
3. Stipulation of counsel for the parties to the
above-entitled cause consenting to the testimony
being taken in shorthand by Dudley Crowther and
reduced to writing without having the witnesses sub-
scribe thereto, and certified by him as to its correct-
ness.

3a. Notice of settlement of the proposed statement of record of evidence on appeal.

4. Statement of evidence prepared in narrative form in pursuance [119] to the rules of court, and certified to by the Judge of said court as a correct, true and properly prepared narrative of the evidence.

5. Copy of the appeal and allowance thereof by the Court, and assignment of errors accompanying the same.

6. Citation on appeal and admission of service of the same by the defendants and appellees Albrights, and acceptance of service of citation on appeal and notice of settlement of the proposed statement of the evidence and waiver of service by the defendant and appellee Jennie Peterson.

7. Stipulation of counsel that original exhibits may be transmitted to the clerk of the Circuit Court of Appeals for this circuit on the appeal herein.

8. Order of Court directing the clerk to certify and transmit such exhibits.

9. Order extending the time for completing and transmitting the record on appeal herein to the Circuit Court of Appeals.

B. K. WHEELER,

United States Attorney, District of Montana.

Service of the foregoing praecipe and receipt of a copy thereof this 6th day of March, 1914, is hereby admitted and acknowledged.

COOPER & STEPHENSON,

Solicitors for Defendants and Respondents W. H. Albright and Villa C. Albright.

[Indorsed]: Title of Court and Cause. Praecipe.
Filed March 6, 1914. Geo. W. Sproule, Clerk.
[120]

Thereafter, on March 6, 1914, an order extending time to file record on appeal was entered herein as follows:

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,
Complainant and Appellant,
vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT
and VILLA C. ALBRIGHT,
Defendants and Appellees.

**Order [Extending Time to March 9, 1914, to Prepare,
etc., Record on Appeal].**

Upon good cause shown, it is hereby ordered that complainant and appellant in the above-entitled cause, may have twenty days in addition to the time allowed by the rules of the court within which to have prepared and certified up to the Circuit Court of Appeals the record on appeal herein.

Dated this 6th day of March, A. D. 1914.

GEO. M. BOURQUIN,
Judge.

[Indorsed]: Title of Court and Cause. Order.
Filed and entered Mar. 6, 1914. Geo. W. Sproule,
Clerk. [121]

Thereafter, on April 6, 1914, an order granting further time to file record on appeal was duly entered herein, as follows, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant and Appellant,

vs.

JENNIE PETERSON (Formerly JENNIE BENEDICT), WILLIAM H. ALBRIGHT and VILLA C. ALBRIGHT,

Defendants and Appellees.

Order [Extending Time to April 8, 1914, to Prepare etc., Record on Appeal].

Upon good cause shown, it is hereby ordered that complainant and appellant in the above-entitled cause, may have thirty days in addition to the time heretofore granted within which to have prepared and certified up to the Circuit Court of Appeals the record on appeal herein.

Entered in open court April 6th, 1914.

GEO. W. SPROULE,

Clerk. [122]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 123 pages, numbered consecutively from 1 to 123, inclusive, is a true and correct transcript of the pleadings, process, orders and decree, assignment of errors and approved statement of the evidence, and other proceedings had in said cause, and of the whole thereof, as appears from the original files and records of said court in my possession as such Clerk; and I further certify and return that I have annexed to said transcript and included within said paging the original citation issued in said cause.

I further certify that I herewith transmit all the original exhibits in said cause, pursuant to stipulation of counsel and the order of the court, to wit; Complainant's 1, 2 and 3 and Defendants' 1, 2 and 3.

I further certify that the costs of the transcript of record amount to Twenty-three 30/100 (\$23 30/100) Dollars, and have been made a charge against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 27th day of April, 1914.

[Seal]

GEO. W. SPROULE,
Clerk. [123]

[Endorsed]: No. 2414. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Jennie Peterson (Formerly Jennie Benedict), William H. Albright and Villa C. Albright, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Received and filed April 30, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

